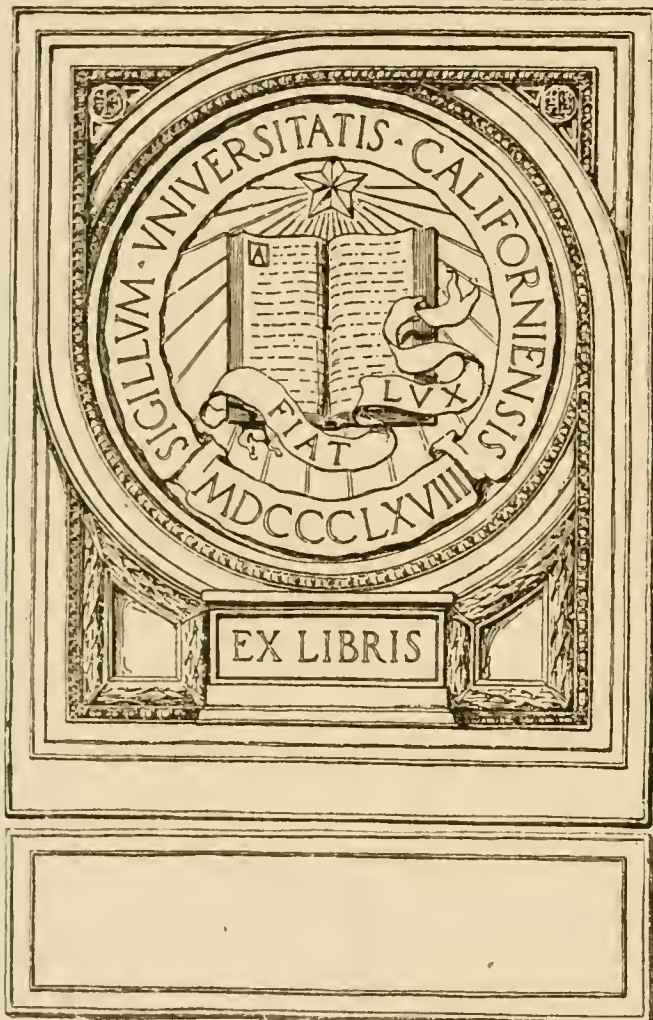


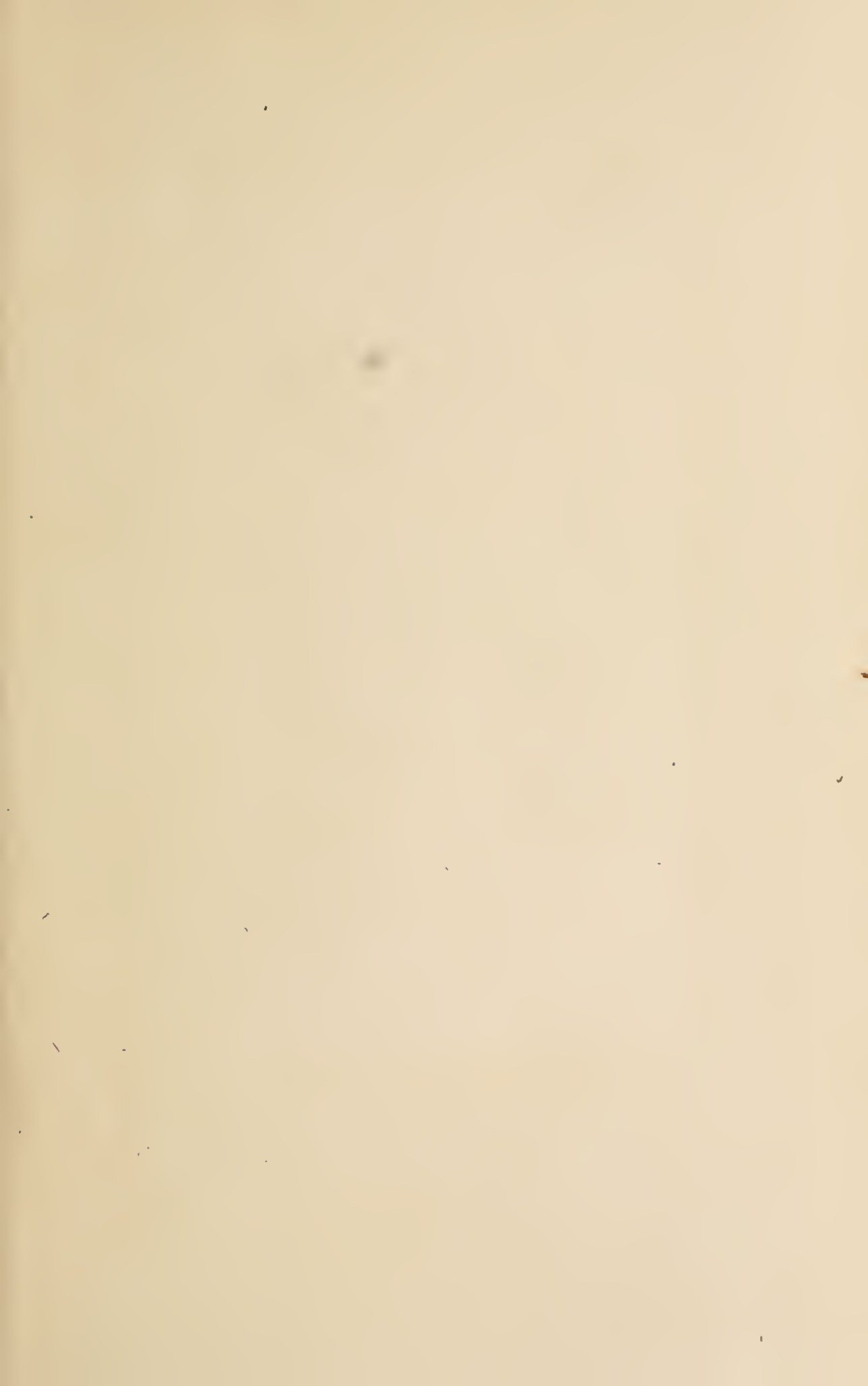
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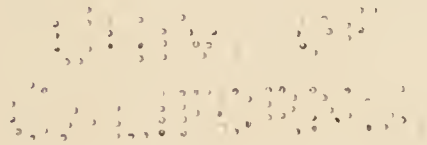


THE
GUILT OF LORD COCHRANE
IN 1814

THE GUILT
OF
LORD COCHRANE
IN 1814

A CRITICISM

BY THE
RIGHT HON. LORD ELLENBOROUGH



LONDON
SMITH, ELDER & CO. 15 WATERLOO PLACE
1914

7200
2936

THE MIND
AND
MORALS

PREFACE

THIS book has been written chiefly for the purpose of refuting the attacks made on my grandfather, Lord Chief Justice Ellenborough.

In 1860 a book appeared called the 'Autobiography of a Seaman' (Lord Dundonald, better known by the name of Lord Cochrane). It contained most unjustifiable attacks, not only on the honour of Lord Ellenborough, but on the honour of many other persons, including a number of naval officers. In consequence of this, besides dealing with Lord Cochrane's trial before Lord Ellenborough, I have given a sketch of some portions of his naval career, including the operations at Aix Roads in 1809.

Wherever I have been able to find sufficient contemporary evidence, I have refuted Lord Cochrane's accusations.

In 1890 the 'Autobiography of a Seaman' was republished, with some alterations, in a one-volume edition by his grandson, Lieut.-General the Earl of Dundonald, K.C.B. In it he repeated nearly all the attacks made upon Lord Ellenborough, the Judge who presided at the trial of Lord Cochrane for fraud. Had he ever made himself acquainted with the history of his family, or read the evidence and letters of George Earp and William Jackson. I do not think that he would have reprinted that book.

At page 281 of the 'Trial of Lord Cochrane before Lord Ellenborough,' Mr. Atlay wrote: 'It is with very great reluctance that the descendants of Lord Ellenborough have revived the details of a story which for the sake of Lord Cochrane's descendants they would have willingly left in oblivion, but so long as the "Lives of the Chief Justices" (by Lord Campbell) stand unamended, so long as the

misstatements in the "Autobiography of a Seaman" and its sequels, are not acknowledged and disavowed, they have no other course.'

Lord Cochrane's grandson has never publicly withdrawn this book. But, unless he has adopted the policy of the ostrich, he must by this time have made himself acquainted with the tainted nature of its origin. I regret if anything that I have written on the subject gives pain to any of Lord Cochrane's descendants. This publication has, however, been rendered necessary by the conduct of the head of their family, who, in 1877 and in 1890, was so 'unwise as to revive a question which in the interests of Lord Dundonald's reputation had better been buried in oblivion.'

Thomas Lord Cochrane, eldest son of the ninth Earl of Dundonald, was born in 1775. In February 1814 he was a captain in the navy, a Knight of the Bath, and in command of H.M.S. *Tonnant*. He had earned a well-deserved reputation as a most skilful and successful seaman. Unfortunately some malignant fairy cursed him at his birth, with an utter disregard for truth and with an unwholesome greed for gold.

Throughout the whole of his life these two conspicuous faults were the cause of misfortunes which marred his successes—misfortunes which would have been avoided by men of one-tenth of his capacity.

His love of excitement and his love of money led him to gamble on the Stock Exchange. In 1814 he and his confederates embarked in a plot to make the funds rise by causing a false report to be spread of the death of Napoleon, and of the entry of the allied forces into Paris.

He was tried for fraud and convicted. The 'Autobiography of a Seaman' (1860, 1861, and 1862) attributes his conviction to the partiality of Lord Chief Justice Ellenborough, who, it alleges, was then a Cabinet Minister, and who wished to crush a political opponent. The Cabinet to which Lord Ellenborough had belonged lasted from February 1806 to March 1807. Lord Ellenborough had frequently opposed the Government that was in power in 1814, and was considered by the Attorney-General to be in opposition. Again, the Autobiographies of 1860,

1861, 1862, and 1890 accuse Lord Ellenborough of refusing to hear Lord Cochrane when he appeared before him with seven affidavits made by respectable Westminster tradesmen. These affidavits were not sworn to until several days after Lord Cochrane's last appearance in Court.

It is on fables such as these that the popular beliefs in the innocence of Lord Cochrane, and in the injustice of Lord Ellenborough, have been founded. The sentence of the Court was that Lord Cochrane should pay to the King a fine of £1,000, that he was to be imprisoned in the King's Bench for twelve months, and that he was to be set in the pillory opposite the Stock Exchange for one hour.

This sentence was pronounced by Sir Simon Le Blanc, with the concurrence of the other three Judges of the King's Bench. The other Judges were Mr. Justice Bailey, Mr. Justice Dampier, and Lord Chief Justice Ellenborough. But then, what was Lord Cochrane's crime? He was on full pay in command of a line-of-battle ship, he had used his nautical knowledge in attempting to deceive his own Admiralty with false news in time of war.

The fourth count of the indictment was that he and his fellow-conspirators had sent a letter to 'Thomas Foley then and there Commander-in-Chief of His Majesty's ships and vessels employed on the Downs Station with a wicked intention to impose and deceive the said Thomas Foley and to induce and cause the said Thomas Foley to communicate the false matters contained in the said last mentioned false and counterfeit letter to the said Commissioners for executing the office of Lord High Admiral.'

Admiral Sir Thomas Foley had been flag-captain to Admiral Thompson at the Battle of Cape St. Vincent; had led the van of the British fleet in the *Goliath* at the Battle of the Nile, and had been Nelson's flag-captain at Copenhagen.

One would have thought that a captain in the navy would have had some respect for an officer with such a record, but Lord Cochrane and his confederates had no scruples about trying to deceive him for their own purposes of private gain. Lord Cochrane had also added to his crimes

by swearing to false affidavits, and had incited his servants to do the same.

We were then at war with both France and the United States. Had the Admiralty or the War Office believed the story, even if only for an hour, ships laden with troops and stores intended to support Wellington in the South of France might have been diverted to other stations.

To deceive a few shareholders or fund-holders by false telegrams, that affect them only, is, in my opinion, a peccadillo compared with the crime of attempting to deceive a nation that is fighting for its life.

Imagine what might have happened had false news reached the Admiralty when Nelson was chasing Villeneuve. What would have been the fate of a captain of a Russian or of a Japanese battleship convicted of such a crime during the late war?

The Solicitor-General, Sir Samuel Shepherd, said in the House of Commons: 'To deceive an Admiral in His Majesty's Navy—that, too, at a period when the fate of Europe hung in the balance, when any false statement, particularly of the nature alluded to, might have influenced some brave man's rashness, or some coward's fears, as to defeat the events which have since happily occurred. The events referred to in this speech were the occupation of Paris by the Allies and the conclusion of peace.

Unfortunately our knowledge of Lord Cochrane's history and achievements has hitherto reached us mainly through his own writings, or what have hitherto passed as such. No man ever blew his own trumpet with greater persistency, or with greater success.

During his lifetime Lord Cochrane played many practical jokes. His greatest and most successful joke was, in my opinion, that of putting his name to the 'Autobiography of a Seaman.' At times I am inclined to think that the book was written chiefly for the cynical purpose of proving that there are no limits to human credulity.

At the same time, I wish it to be distinctly understood that I do not desire to detract from the credit that is really due to him. He deserves all the praise that has been

given to him for the capture of the *Gamo*. I look upon the capture of the *Esmeralda* as one of the finest achievements of that class that was ever planned and successfully carried out, second only to the cutting out of the *Hermione* by Captain Hamilton in 1799. But in all the histories of his other exploits, the profits of Mr. Earp, the real writer of the Autobiography, must be taken into consideration.

The so-called 'Autobiography of a Seaman' has been a fraud on the boyhood of England for over fifty years. It is not an autobiography, it was not even written by a seaman. It was written as a pecuniary speculation by a Mr. George Earp, with the object of creating a state of public opinion favourable to certain money claims, of which, if successful, Mr. Earp was to receive ten per cent. The same writer had previously assisted Lord Cochrane in the preparation of a book called 'A Narrative of Services in Chili and Peru,' which was written with a similar object. This last book attacked, among others, Zenteno, who had been Minister of Marine in Chili in 1818. Zenteno's son replied to it in a pamphlet called 'Refutacion de las Acusaciones de Lord Cochrane,' in which he shows it to be as untruthful as I shall prove the Autobiography to be.

In writing the books that I have referred to, Mr. Earp was assisted by a certain William Jackson, who became Lord Cochrane's secretary in 1814, shortly after the fraud but before the trial. Lord Cochrane had employed him in writing pamphlets and in drawing up charges attacking Lord Ellenborough. Money was eventually obtained both from the British and Brazilian Governments. Jackson had followed Lord Cochrane to Brazil. In consequence of this, he also had claims on the Brazilian Government. The 'Narrative of Services in Chili and Peru' quotes him largely. As Lord Dundonald grew older, his memory began to fail, and Mr. Earp relied more and more on Jackson for his facts.

Lord Dundonald left £100 in his will to this 'steady friend and former secretary.' He also left ten per cent. of whatever money could be obtained from the British or foreign Governments to Mr. Earp.

When Lord Dundonald died the succession to the title was disputed. There were two claimants. The chief point in dispute was whether or not a Scotch marriage had taken place in 1812. All parties admitted an English marriage in 1818. In 1863 the Lords Committee for Privileges decided in favour of the eleventh Earl.

At this investigation Mr. Earp was called as a witness to prove a statement made in the Autobiography concerning the marriage of Lord Cochrane's uncle, the Hon. Basil Cochrane. This statement was shown to be untrue. In cross-examination Mr. Earp gave an account of the manner in which the Autobiography had been compiled. Mr. Earp's correspondence with Mr. W. Jackson was printed with the 'Jackson' evidence which was taken later. This cross-examination and part of the correspondence will be found at page 253 of this book.

On the death of his employer, William Jackson endeavoured to blackmail the eleventh Earl as to what evidence he should give. Failing in this, he took money from the solicitors of the other claimant. He committed perjury by denying that he had done so. This he continued to do until confronted by a memorandum in his own handwriting.

Lady Dundonald, when on oath, said of him : ' I have always despised the man, and look upon him as the greatest enemy my husband ever had in life, and the ruin to his purse and character.' . . . ' Alas, Lord Cochrane had more confidence in him that he deserved.'

Yet this creature's writings and the information he gave to Mr. Earp, are the foundation stones of the popular belief in Lord Ellenborough's injustice and in Lord Cochrane's innocence. Lord Cochrane and his secretary have, moreover, accused judges, juries, witnesses, barristers, solicitors, and a large number of naval officers of dishonourable conduct. It has, therefore, become necessary to show what character for truthfulness such accusers deserve.

In 1816 the House of Commons repudiated Lord Cochrane's charges against Lord Ellenborough by a majority of 89 to 0. William Jackson tells us that he drew up those

charges. Since then no *fait nouveau*, no fresh evidence has been discovered in favour of Lord Cochrane. On the contrary, the disclosures of his solicitors in 1861 have considerably increased the evidence of his guilt.

The well-known literary talent of the Hon. J. W. Fortescue has produced a far more readable book than either of the above-mentioned biographies. He appears to have read some of the debates in which Lord Cochrane took part in the House of Commons, and has, in consequence, formed an independent judgment on the political portion of Lord Cochrane's career. He writes: 'One would be glad, did not veracity compel some mention thereof, to cut the whole of Cochrane's parliamentary career out of his biography.' In other respects his book is a well-written condensation of the fables contained in the Earp-Jackson-Dundonald literature.

Among other things Mr. Fortescue has followed the Autobiography in saying that Lord Ellenborough was a Cabinet Minister at the time of the trial, and has also stated that the back pay, suspended during Lord Cochrane's disgrace, was restored to his grandson seventeen years after his death. Both these statements are incorrect.

In 1877 the then Lord Cochrane (now Lieut.-General the Earl of Dundonald, K.C.B.) appeared in a Committee Room of the House of Commons with a petition to the Queen in one hand and the 'Autobiography of a Seaman' in the other; and I have no doubt that he honestly believed their contents.

On April 30, 1816, as I have already said, two years after the trial, when there had been ample time to consider the whole matter, the House of Commons, by a majority of 89 to 0, refused to consider Lord Cochrane's charges against Lord Ellenborough. Lord Ellenborough's descendants thought this conclusive, and never afterwards troubled themselves about Cochrane's affairs, and none of them knew anything about them in 1877.

Now, badly as his ancestor behaved to the many persons whom he libelled in his lifetime, I think that he treated his innocent grandson far worse than any of the people

whom he denounced, when he left him nine-tenths of his claims on the British Government, with the Earp-Jackson-Dundonald literature to support them. It was a most cruel legacy.

The petition contained strictures on the conduct of the Chief Justice who tried the case. In the chapter devoted to this petition I have given an account of the steps taken in consequence by my father, the Hon. Henry Spencer Law, then the eldest surviving son of the Judge. I have printed his correspondence with Sir Robert Anstruther, the Chairman of the Committee, and with Sir Stafford Northcote, the Chancellor of the Exchequer, as I think that in the interests of historical truth the exact circumstances connected with this grant should be more widely known. Unfortunately, when Mr. Atlay's book was in preparation, this correspondence could not be found.

The petition was for back pay. In consequence of Mr. H. S. Law's proceedings, back pay was *not* granted. £5,000, in respect of the distinguished services of his grandfather, was granted. In his letters to Sir Robert Anstruther and Sir Stafford Northcote, Mr. H. S. Law had stated that he had no objection to a grant of this description. I have printed in full the grandson's answers to the questions put to him with reference to his grandfather's will and the part of the will relating to this legacy in the appendix.

In the debate that took place on April 10, 1877, on the motion for a Select Committee, the supporters of the petition appear to have relied chiefly on the 'Autobiography of a Seaman' for their facts, and to have made mistakes in consequence. But Mr. Lyon Playfair (afterwards Lord Playfair) went still further. He quoted a clause from a document which he described as being the autograph will of the late Earl of Dundonald, leaving his claims on the British Government to his grandson. I do not know who supplied him with this will. Still, I do not think that he would have wilfully deceived the House of Commons, *but the will that he quoted from was not the one that was proved at Somerset House*. The evidence given by the petitioner, and this substitution of an unproved will for a real one,

kept the public in ignorance of the Earp clauses and of the Earp share in the Autobiography.

The petitioner told the Select Committee that his grandfather had left him 'all the moneys' that might be obtained from the British Government, and he also said that 'he had the will with him.' If so, it seems a pity that he did not consult it. Had he done so, he would doubtless have told the Committee that he was only to receive nine-tenths of these moneys and that the other tenth was to go to Mr. Earp.

The question would then have entered into a fresh phase. Had the Select Committee and the public been fully informed, Mr. H. S. Law or some other members of his family would certainly have drawn attention to the scandal of public money being granted to Mr. Earp for 'his distinguished services in composing the "Autobiography of a Seaman." ' This would have given rise to a further discussion, which would have lessened the chances of a vote being obtained. If granted, it would probably have been so worded as to prevent any of the money reaching Mr. Earp or his representatives.

No sooner had the substituted will done its work in the House of Commons than the representatives of Mr. Earp made their appearance in the Law Courts with the *real* will in their hands. After hearing their arguments, Vice-Chancellor Malins decided in their favour and against Lord Cochrane.

Smith v. Lord Cochrane. Times, Aug. 1, 1878.

There is in existence a popular belief that Lord Cochrane's case was re-considered or re-investigated at some period or another, and that he was proved to be innocent. I have been utterly unable to find out when, where, or by whom this investigation was conducted. It certainly did not take place prior to 1847, for in that year he complained 'that he had a claim to the revisal of the sentence pronounced against him in the year 1814 and to the removal of the remaining consequences of such verdict and sentence.' Nor is it likely to have occurred in the interval between 1847 and 1860, for in the latter year (the year of his death) the Autobiography complains in italics '*that unjust*

'Observations on Naval Affairs, 1847,' p. 73.

Autobiography, ii. 318.

public sentence has never been publicly reversed nor the equally unjust fine inflicted on me remitted. It certainly did not take place in 1877, for the Select Committee did not ask a question concerning the trial, and Lord Ellenborough's name was never mentioned in the evidence before them. The only witnesses examined were the petitioner and Mr. Bramwell, of the War Office, who produced papers relating to the cases of Sir Robert Wilson and Major Bristow, who had been restored to their rank after dismissal from the army. Many years ago a book was published, which attracted a good deal of notice at the time, called '*Common or Popular Errors.*' Should a fresh edition ever be issued and brought up to date, the belief that Lord Cochrane was declared innocent after investigation, and that his back pay was in consequence restored to him, ought to be among the most prominent of them.

I have been warned by a friend that the public do not care for adverse evidence, when once its mind has been made up by the exercise of the emotional faculties, and that this book will, in consequence, be unpopular; and, moreover, that I shall share its unpopularity. In the interests of my grandfather's reputation, and of historical truth, I deem it my duty to run these risks. If history is to be written at all, it should be written truthfully. If that is impracticable, then as truthfully as possible, and not in the style of the '*Dundonald*' literature. I have given my authorities for all important statements to a greater degree than has been done in most historical works. I have tried to be as accurate as possible. This is more than can be said of any of the writers who believe in Lord Cochrane's innocence.

All existing biographies of Lord Chief Justice Ellenborough, with the exception of a short sketch of the earlier portion of his life by an unknown writer in '*Public Characters,*' which appeared in the year 1802, have been written by his political opponents. '*Public Characters,*' I may add, also contains a laudatory account of both Lord Cochrane and of his uncle, the Hon. Cochrane Johnstone. Lord Ellenborough took but little part in politics, and never entered or tried to enter the House of Commons until he was made Attorney-

General. He was, however, a strong supporter of the monarchical principle of government, as being best suited to Great Britain at a time when it had been greatly weakened by the French Revolution and by the unpopularity of the Prince Regent. In his opinion the Prince Regent had to be supported in hopes of better times. Those better times have since come. From the time of the accession of Queen Victoria, the monarchical principle has continued to strike fresh roots into the hearts of the people ; and we, who have seen Jubilees and Coronations, seen a King lead in a Derby winner, find it difficult to understand either the feelings of those who dined on a calf's head to celebrate the anniversary of the decapitation of Charles I, or of the crowd who spat upon old Queen Charlotte, and constantly hissed the representative of monarchy.

With mobs of that description Lord Ellenborough had no sympathy, and while there were laws in England that could prevent such people from obtaining the mastery, whether by means of riots or other violent action, he was determined to administer them fearlessly. Hence his unpopularity with the Hones, Cobbetts, and other revolutionists, and also with those politicians who, while disdaining such allies, did not scruple to make use of them.

As the whole of this book was printed before the war, now raging, broke out, I felt that publication should not be delayed because, at the age of seventy-three, I might not, in the event of delay, ever again have the opportunity of vindicating the memory of my grandfather.

ELLENBOROUGH.

WINDLESHAM COURT,
SURREY.
August 1914.



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THE GUILT OF LORD COCHRANE IN 1814

A CRITICISM

PART I

INCIDENTS OF LORD COCHRANE'S CAREER IN THE ENGLISH NAVY

CHAPTER I

LORD COCHRANE'S EARLY APPOINTMENTS

THOMAS, LORD COCHRANE, eldest son of the 9th Earl of Dundonald, was born in December 1775. His father spent the greater portion of his life and money in working at patents, and inventions, (more or less connected with chemistry,) which ultimately caused his pecuniary ruin. He was unable to give his son more than six months' tuition at a suitable school; for the rest Lord Cochrane was educated chiefly at home. It is possible that he did not lose much by this, and that he learnt more of what was afterwards likely to be of use to him in his father's laboratory, than he would have done had he studied dead languages at a public school.

At the age of thirteen he received a commission in the 104th, though it does not appear that he ever actually did duty with that regiment. He preferred the naval service, and joined H.M.S. *Hind* in June 1793 at the age of seventeen.

and a half. His uncle Captain the Hon. Alexander Cochrane had foreseen that it was probable that his nephew would wish to change his profession, and had therefore considerably entered him as part complement of the *Vesuvius*, *Carolina*, *Sophie*, and *Hind*, at a time when he still held a commission in the 104th Regiment.

‘Autobiography of a Seaman,’ i. 65, second edition.

In January 1795 he was appointed Acting Lieutenant of the *Thetis*, an appointment which was shortly afterwards confirmed, his previous four and a half years’ nominal service counting as part of the six years’ sea-time necessary to qualify him for that rank. This appears not to have been an uncommon practice at that time. George the Third, however, made his own son the Duke of Clarence, afterwards William the Fourth, serve the whole of his six years’ sea-time. Of this Prince William laughingly complained, saying, ‘Had I been the son of an admiral instead of being the son of a king, I should have been a lieutenant long ago.’

It must be noticed that in consequence of this late entry into the service Lord Cochrane never enjoyed either the advantages or disadvantages of being treated as a youngster in a midshipman’s mess. Seventeen and a half years of age, over six feet high, with an immense length of arm, he was probably a match with his fists for any other member of his mess when he joined the service as a nominal youngster.

Lord Cochrane continued to serve on the North American Station until 1798, when Lord Keith took him on board his flagship the *Barfleur* on the Mediterranean Station. In 1800 Lord Keith appointed him to the command of the brig *Speedy*. Though she was small and lightly armed, she was a fast sailer.

It would be hard to imagine a more enjoyable life than that spent by Lord Cochrane at the age of five and twenty when in command of the *Speedy*. His life was a perpetual regatta, chasing and being chased, with a few shot thrown in from time to time to add to the interest of the sport.

For thirteen months he was most successful, and captured a considerable number of prizes. In May 1800 he captured

the Spanish xebec frigate *Gamo* by boarding, notwithstanding that she carried a crew six times as numerous as his own. His successes were mostly due to his always attacking the enemy in some unexpected manner. He was full of stratagem. On this occasion he only lost 3 seamen killed, 1 officer and 17 men wounded, while the losses in the actual boarding are stated to have been only 1 seaman killed and 3 wounded.

Unfortunately, one night early in July, when off Alicante three large ships were sighted. Misled by visions of Spanish galleons, Lord Cochrane prepared to chase. When day dawned, the vessels were seen to be French line-of-battle ships. It was too late, and after attempting every manœuvre he could think of, Lord Cochrane found it necessary to haul down the *Speedy's* colours. He became a prisoner, but was shortly afterwards exchanged.

The Admiralty received the news of his acquittal for the loss of the *Speedy* on August 8, 1801, and immediately promoted him to the rank of Captain. Lord Cochrane considered that his promotion ought to have been dated the day of his capture of the *Gamo* and quarrelled with Lord St. Vincent on the subject. Lord Dundonald's autobiography is full of accusations against Lord St. Vincent, none of which ought to be accepted without corroboration. Modern historical investigations have greatly raised St. Vincent's reputation, and the difficulties with which he had to contend in every direction are now better understood.

Lord Cochrane's next appointment was to the command of the *Arab*, which vessel is said to have been a slow sailer. In 1806, through the influence of the Duke of Hamilton, he was appointed to a new fast-sailing frigate, the *Pallas*, and sent to cruise off the Azores to intercept Spanish ships bound for Cadiz. He fell in with a dispersed convoy. One of his biographers has estimated his share of prize-money, all made within ten days, at £75,000. The *Pallas* returned to Plymouth with three golden candlesticks five feet high at her mastheads. She was afterwards the 'Golden Pallas.'

Allen's
'Life of
Earl Dun-
donald.'
p. 57.

Ibid.
p. 58.

CHAPTER II

THREE VESSELS OFF THE GIRONDE

At this distance of time it is extremely difficult to deal with the numerous exaggerations or half-truths connected with Lord Cochrane's services.

As an instance of what I mean I shall take the case of the three French vessels that ran aground off the Gironde in 1806, because the autobiographical accounts are so contradictory.

In April 1806 the *Pallas* was employed in blockading the Gironde, and on the 5th of that month sent her boats away to cut out a French vessel that was lying some distance up that river. It was a well-planned and successful expedition. At about 3 A.M. on the morning of the 6th, Lieutenant Haswell, who commanded the boats, surprised and carried by boarding the *Tapageuse* of 14 guns and 95 men with a loss of only 3 men wounded.

There are many contradictory 'Dundonald' versions as to what took place before the *Pallas* boats rejoined her. Curiosity, and the interests of historical truth, induced me to try to find out what really did happen on that occasion.

The 'Autobiography' says :

'Autobiography,' i.
189, second
edition.

Soon after daylight, three strange sail appeared to windward, making for the river. As the private signal was unanswered, there could be no doubt but that they were enemies, to oppose whom we had only forty hands on board, the remainder of the crew, as previously stated, being in the prize brig.

The *Pallas* weighed and set all her canvas as quickly as possible, and

by superior sailing we were soon well up with one of them and commenced firing our bow guns—the only guns in fact we were

able to man. Scarcely had we fired half a dozen shots, when the French captain deliberately ran his ship ashore as the only way of saving himself and crew. The corvette was dismasted by the shock and immediately abandoned by the crew who got on shore in their boats; though had they pulled on board the *Pallas* instead, we were literally incapable of resistance.

After the crew had abandoned the wreck we ran nearly close and fired several broadsides into her hull to prevent her floating again with the tide.

Now this description contradicts itself. The *Pallas* is represented to have been unable to man more than her bow guns, and yet she fires several broadsides. Then again we are told that had the enemy's boats pulled towards the *Pallas* they would have found her incapable of resistance. Now a frigate that can weigh her anchor, make all sail, and fire several broadsides would have easily sunk and beaten off any number of boats that might have attacked her by daylight.

The 'Autobiography' goes on to say :

Whilst thus engaged the other corvettes, which had previously run out of sight, again made their appearance to the S.S.W. under a press of sail, evidently coming up fast to the assistance of their consort.

As it was necessary once more to take the initiative, we quitted the wreck, ran up our colours, and gave chase, firing our bow guns at the nearest, which soon afterwards followed the example of the first, and ran ashore too—with the same result of being dismasted—the crew escaping as in the case of the other.

Of the remaining corvette we for a time took no notice, and made sail towards the mouth of the Garonne to pick up our crew which had necessarily been left on board the vessel captured on the river. As the *Pallas* neared the Cordovan lighthouse we observed the third corvette making for the river. Finding herself intercepted she also ran on shore, and was abandoned in like manner.

According to the log of Lieutenant Haswell, the first corvette was completely disposed of before the other two were sighted. I give a summary of his log. As however he was away in the boats, this log must have been copied from the ship's log. At 5 A.M. on the 6th, the *Pallas* observed her

boats coming out with their prize chased by a brig which she beat off. At 9 A.M. a strange sail was observed to windward. At 9.30 the *Pallas* weighed and made all sail in chase of the strange sail (which proved to be a French corvette), and commenced firing her bow guns at her some time after 12. At 1.30 the corvette ran on shore, which dismasted her. At 2 P.M. the *Pallas* ran close to her and fired several broadsides at her. Then the *Pallas* saw two sail to the south and west. At 4 she fired her bow guns, shotted at one of them, and perceived her colours to be French. She ran on shore, and was also dismasted. Then the *Pallas* anchored, the other ship not being in sight. At 11.30 P.M. a light breeze sprang up, and the *Pallas* again weighed and made sail. At 8 A.M., on the 7th, the vessel she was in chase of was observed to be on shore and dismasted. At 9 A.M. the *Pallas* anchored near the third ship and fired two guns at her. At 9.30 A.M. the *Pallas* weighed and made sail again, and at 2 P.M. she anchored off the third ship and fired a broadside at her. At 3 P.M. the *Pallas* again weighed, and at 4 P.M. there were three strange sail in sight.

On the 8th, at 6 A.M., the *Pallas* hove to and joined her prize, the national corvette *Tapageuse* of 14 guns and 197 men. At 8 A.M. the squadron was observed in chase. At noon it was not in sight. On the 9th the *Pallas* rejoined the squadron.

The log says that 197 men were on board the *Tapageuse*, but this I look upon as a clerical error. Lord Cochrane's despatch describes her as the *Tapageuse* of 14 guns and 95 men, which is about what the complement of a vessel of her size would be. After taking the *Tapageuse*, the *Pallas* victualled 97 prisoners. Four or five British subjects appear to have been prisoners on board her prize. The whole business was a very creditable one to all concerned. It is the subsequent exaggerations and contradictory accounts that are deserving of censure.

‘Observations on Naval Affairs,’ p. 89.

In 1847, forty-one years after these events, when few of his contemporaries remained alive to dispute his statements, Lord Dundonald wrote that there were only 40

men on board the *Pallas* at the time she attacked these vessels, an assertion that I beg leave to doubt for the following reasons. In his despatch he does not mention that he had only 40 men on board. His senior officers and the Admiralty would have known better.

The complement of the *Pallas* was 215. On April 8 she victualled 205 men. Nine men and one volunteer or boy were checked as absent. They were probably away in the prize-brig *Pomone*. A work called 'Public Characters,' in a laudatory account of Lord Cochrane, written three years after these events, states that in this frigate, 'while 90 of his men were absent, having been sent to cut out a corvette of 14 guns, his Lordship attacked three French national ships, etc. . . .' If this account is correct, 115 men would still have been on board the *Pallas*.

In 1799 Captain Hamilton of the *Surprise*, which had a complement of 197 men and boys, only took 108 men with him when he cut out another frigate, the *Hermione*.

The *Tapageuse* is said to have been twenty miles above the Cordovan shoal, near which the *Pallas* anchored. With a twenty-mile pull before them, it is not likely that the boats of the *Pallas* would have been overloaded, even if they did have the tide with them. It is, however, quite within the bounds of possibility that only 40 *seamen* were left on board the *Pallas*. But boys can loose sails, marines and dry idlers can sheet home and hoist.

The strength of the three vessels driven on shore has been variously described. In 1847, at p. 45 in 'Observations on Naval Affairs,' they are described as being a brig and two corvettes, but at p. 89 Lord Dundonald tells us that they were 'a brig and a corvette of 18 and 22 guns, and a large armed frigate-built ship of 24 guns laden with stores for Rochefort.'

Guérin, the French historian, says: 'Cette frégate [*Pallas*] de concert avec un vaisseau monté par Cochrane avait auparavant enlevé dans le Gironde la corvette *La Tapageuse*, et fait échoué deux autres corvettes et un brig français.'

It is clear that the presence of a British squadron outside must have considerably hampered the movements

Documents at Record Office. See 'Autobiography,' i. 188.

'Public Characters, 1809-1810,' p. 291.

James's 'Naval History,' ii. 405-12, new edition.

'Observations on Naval Affairs,' p. 89.

'Histoire Maritime de la France,' vi. 44.

of these vessels, and was probably the cause of their involving themselves at night-time among the shoals at the entrance of the Gironde.

James's
'Naval His-
tory,' iv.
138.

James, the naval historian, describes these vessels as being the 'French 20-gun ship-corvettes *Garonne* and *Gloire* and the 16-gun brig-corvette *Malicieuse*.'

A brig is a two-masted vessel carrying yards on both masts, whereas a ship is a three-masted vessel carrying yards on all three masts. There is no possibility of mistaking the one for the other.

We are indebted to Lieut.-General the Earl of Dundonald, grandson of Lord Cochrane, for no less than four distinct, but contradictory, descriptions of the vessels that ran on shore outside the Gironde on April 6 and 7, 1806.

'Autobio-
graphy,'
p. 98, 1890
edition.

One of them is pictorial. A woodcut in his edition of the 'Autobiography' represents the *Pallas* blazing away with *both broadsides*, not bow guns only. On her port side, close to her, is a partly dismasted ship-rigged vessel whose boats are leaving her. Her ensign has its colours perpendicularly placed and she is therefore probably wearing *French* colours. On the starboard side of the *Pallas*, two ship-rigged vessels are approaching under all plain sail except the mainsail. One of them is opening fire on the *Pallas*. Their colours are placed horizontally and are therefore probably meant for *Dutch* or *Spanish* colours. This sketch is probably a copy of a picture of some other action.

These vessels are described as three corvettes, at pp. 98 and 99. But in his petition to the House of Commons in 1877, asking for a pecuniary reward for his grandfather's distinguished services, he says that with only 40 men remaining on board, his grandfather 'attacked with his frigate two French corvettes of 22 guns and a large French frigate, and drove them on shore.'

Now a large French frigate would assuredly have tried the chances of battle before running on shore, especially if two corvettes had been near enough to help her. The growth of this vessel is remarkable. In 1806 she is a corvette, in 1847 she is a large armed frigate-built storeship of 24 guns, and in 1877 she is a large frigate, apparently more

than a match for the *Pallas*. I began to wonder if in course of time she would not become a line-of-battle ship.

But she and her consorts have already done better than that. The fourth version is as follows: At p. 266 in his edition of the 'Autobiography,' the grandson describes them by what is possibly a misprint, as 'three heavily *armoured* French corvettes.' So that Lord Cochrane in a wooden sailing frigate with only 40 men on board frightened and drove on shore three French ironclads in the year 1806. That is the present state of the legend. It is, however, capable of still further improvement.

The italics
are mine.—
Ed.

The 'Autobiography' blames the Admiralty and Lord St. Vincent for not promoting Lieut. Haswell until four months after capture of the *Tapageuse*. Mr. Allen, however, attributes the delay in promoting him to Lord Cochrane himself. He points out that in his despatch he 'nowhere mentioned that officer's services with any praise,' and that in it 'there was as it were a sinister intention manifested to give to Lieut. Mapleton who was not present the share of praise which belonged to Haswell.'

Allen's
'Life of
Dundonald,' p. 65.

In May 1806 the *Pallas* was employed as inshore frigate off the Isle d'Aix, and on the 14th of that month she fought an indecisive action with the French frigate *Minerve*. They came into collision, both ships suffered heavily in their rigging, the *Pallas* losing her foretopmast, jib-boom, fore- and main-topsail yards, while the *Minerve* lost her fore-yard.

As two other French frigates were approaching, the *Pallas* drew off and rejoined the British squadron. The *Pallas* only lost 1 man killed and 5 wounded in this action.

In July 1806 the *Pallas* had returned to England and Lord Cochrane proceeded to get himself elected by the borough of Honiton, a constituency which had previously rejected him. The 'Autobiography' tells us that when he first stood for Honiton that,

to the intense disgust of the majority of the electors, I refused to bribe at all, announcing my determination to 'stand on patriotic principles,' which, in the electioneering *parlance* of

'Autobiography,' i.
178-81.

those days, meant 'no bribery.' To my astonishment, however, a considerable number of the respectable inhabitants voted in my favour, and my agent assured me that a judicious application of no very considerable sum, would beat my opponent out of the market. This, however, being resolutely refused, the majority voted in favour of his five pound notes.

To be beaten, even at an election, is one thing; to turn a beating to account is another. Having had decisive proof as to the nature of Honiton politics, I made up my mind that the next time there was a vacancy in the borough, the seat should be mine without bribery. Accordingly, immediately after my defeat, I sent the bellman round the town, having first primed him with an appropriate speech, intimating that 'all who had voted for me, might repair to my agent, J. Townsend, Esq., and receive ten pounds ten.'

The novelty of a defeated candidate paying double the current price expended by the successful one—or, indeed, paying anything—made a great sensation. Even my agent assured me that he could have secured my return for less money, for that the popular voice being in my favour, a trifling judicious expenditure would have turned the scale.

I told Mr. Townsend that such payment would have been bribery, which would not accord with my character as a reformer of abuses—a declaration which seemed highly to amuse him. Notwithstanding the explanation that the ten guineas was paid as a reward for having withstood the influence of bribery, the impression produced on the electoral mind by such unlooked-for liberality, was simply this—that if I gave ten guineas for being beaten, my opponent had not paid half enough for being elected; a conclusion which, by a similar process of reasoning, was magnified into the conviction that each of his voters had been cheated out of five pounds ten.

The result was what had been foreseen. My opponent, though successful, was regarded with anything but a favourable eye; I, though defeated, had suddenly become most popular. The effect at the next election, must be reserved for its place in a future chapter. Next July the electors of Honiton chose me as their representative in parliament.

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'Autobiography,' i. 202.

The story of this election is worth relating. My former discomfiture at Honiton, and the ten guineas a head paid to those who had voted for me on the previous occasion, will be

fresh in the recollection of the reader. A general election being at hand, no time was lost in proceeding to Honiton, where considerable sensation was created by my entrance into the town in a *vis-à-vis* and six, followed by several carriages and four filled with officers and seamen of the *Pallas*, who volunteered to accompany me on the occasion.

Our reception by the townspeople was enthusiastic, the more so, perhaps, from the general belief that my capture of the Spanish galleons—as they were termed—had endowed me with untold wealth; whilst an equally fabulous amount was believed to have resulted from our recent cruise, during which my supporters would have been not a little surprised to learn that neither myself, officers, nor crew, had gained anything but a quantity of wine, which nobody would buy; whilst for the destruction of three French corvettes we never received a shilling.

Aware of my previous objection to bribery, not a word was asked by my partisans, as to the price expected in exchange for their suffrages. It was enough that my former friends had received ten guineas each after my defeat, and it was judged best to leave the cost of success to my discretion.

My return was triumphant, and this effected, it was then plainly asked, what *ex post facto* consideration was to be expected by those who had supported me in so delicate a manner.

‘Not one farthing!’ was the reply.

‘But, my Lord, you gave ten guineas a head to the minority at the last election, and the majority have been calculating on something handsome on the present occasion.’

‘No doubt. The former gift was for their disinterested conduct in not taking the bribe of five pounds from the agents of my opponent. For me now to pay them would be a violation of my own previously expressed principles.’

This pretty fairy tale about the Honiton election was invented for the purpose of concealing the fact that the high-minded Lord Cochrane, the Radical Reformer, the blameless advocate of purity of election, had himself bought the electors of the Borough of Honiton in the most shameless and unblushing manner. His own account of the election, as told by himself in the House of Commons in 1817, shows that his conduct was such as might have brought down punishment upon him even in those lax days.

On January 17, 1817, he said in the House of Commons :

He knew very well that he might be punished for what he had done. Though he was conscious that he had done wrong, he assured the House that that was the very way he had been returned. If any member disputed it, he could only say that he was willing to shew the bills and the vouchers which he had for the money. He had no doubt but there were very many in that House who had been returned by similar means. His motive, he was now fully convinced, was wrong, decidedly wrong, but as he came home pretty well flushed with Spanish dollars, he had found this borough open, and he had bargained for it, and he was sure that he would have been returned had he been Lord Camelford's black servant or his great dog.

The following account of the Honiton election appeared in a short sketch of Lord Cochrane's life in 1809. The writer throughout adopts a tone favourable to Lord Cochrane.

• Public
Characters,
1809-1810,
p. 297.

Lord Cochrane therefore, by way of redeeming his pledge, repaired once more to the town of Honiton. He set out from the port of Plymouth, on this occasion, in a true *seaman-like* style. He himself, accompanied by a couple of lieutenants, and one midshipman, all in full dress, as if engaged in actual service, proceeded in one carriage, and were followed in another by his boat's crew, new-rigged and prepared for action. On the box sat the helmsman, who wished to regulate the *steerage*, which he doubtless lamented to see confided to two lubberly landsmen of postilions, with favours in their hats, and boots on their legs; while the boatswain, perched on the roof of the carriage, with his whistle in his mouth, kept the whole in order, and enabled all to cheer in due time, every blast being accompanied by a long and loud huzza. On their appearance at Honiton, they were received with loud plaudits, by a considerable body of the electors, but notwithstanding this, they had some reason to consider themselves on an enemy's coast, as they were obliged to expend almost every *spare shot in the locker*, before the conclusion of the contest. It was favourable, however, and Captain Lord Cochrane at length beheld himself a legislator; but this was not of long duration, for a speedy dissolution of the short Parliament took place, so that after enjoying a seat for this pure and incorruptible borough during a year, he found himself some thousand guineas lighter than when he first left Plymouth; yet some of

his worthy constituents appeared as eager as ever to *hold out their hands*, no doubt for the purpose of a friendly shake !

This was too much to be done, at a time when there was scarcely a prize to be met with at sea. His lordship therefore immediately set sail for Westminster, where officers of the navy had been returned at little or no expense to themselves during the last half century.

On August 23, 1806, Lord Cochrane was appointed to the command of the *Impérieuse*, the crew of the *Pallas* being turned over to her. The *Impérieuse* had been formerly the Spanish frigate *Medea* before her capture in October 1804 ; she was built in 1798, her tonnage was 1,046. On November 17 she left Plymouth in an unseaworthy condition, with her holds unstowed, guns unsecured, and rigging all slack. She drifted inside of Ushant, and was one time in danger of being wrecked.

'Autobiography,' i. 211.

Allen's 'Life of Earl Dundonald,' p. 78.

For this of course he blames others, but this state of unpreparedness was in a great measure due to Lord Cochrane's having left everything to the first lieutenant, while he was attending to politics in London. Lord Cochrane when a captain in the British Navy never appears to have attended to the fitting out of his ships. When he was appointed to the *Tonnant* he applied to have an 'acting captain' appointed to fit her out, ostensibly to enable him to attend to a lamp patent, but more probably to leave him leisure to operate on the Stock Exchange.

There was a general election in May 1807, and Lord Cochrane reappeared in Parliament as member for Westminster.

In the 'Autobiography of a Seaman' we are asked to believe that Lord Cochrane's misfortunes were all due to the fact that he was an advocate of naval reform, in the House of Commons and elsewhere. This is contrary to fact. Lord St. Vincent was the great naval reformer of the day, and had set to work long before Lord Cochrane's name appears in connection with the movement. In 1802, when First Lord of the Admiralty, he brought in a bill for a committee to investigate the abuses in the dockyards.

Tucker's
'Memoirs
of Earl St.
Vincent,'
ii. 155 n.

His secretary, Mr. Tucker, dined with Lord St. Vincent on the day that it was submitted to the Cabinet. He says that

Lord St. Vincent's looks, manners, and tones, all indicated that something had gone very much amiss. The Secretary awaited silently. But after dinner, when the gentlemen were about to rejoin the ladies:—'Tucker, stay, stay!'—and then: 'Excepting My Lord Chancellor, the *whole* Cabinet has *mutinied* to-day! My Commission is rejected!—but,' bending his fist, while his countenance personified his invincible firmness, 'we'll read them a lesson on the Articles of War to-morrow, Sir,' and then related the opposition he had met with; nor would he again sit on the Ministerial Bench in the House of Lords till he had carried this point.

Markham's
'A Naval
Career in
the Old
War,' p.
193.

This commission was given extraordinary powers. As it was considered that the effects of the measure would depend principally upon the characters of the commissioners, their names were submitted to the House of Commons before the bill was passed.

The Commissioners were five in number: among them were Vice-Admiral Sir Charles Pole, Hugh Leycester, afterwards a judge, Ewan Law, a retired Indian judge, a brother of Chief Justice Ellenborough.

Hansard,
xxxvi.,
Dec. 22,
1802, p.
1146 *et seq.*

Lord St. Vincent's bill passed the House of Commons with some difficulty, and was strongly opposed in the House of Lords. Lord Nelson and Lord Chief Justice Ellenborough spoke in favour of the bill, the latter remarking on the enormous frauds that had come under his notice when Attorney-General.

From the manner in which Lord Ellenborough accepted an amendment of Lord Chancellor Eldon's he appears to have had charge of the bill when in Committee.

This commission made fourteen reports, all of which were signed by Ewan Law. The abuses disclosed by them were astounding. The tenth report inculcated Dundas, the close ally of Pitt, then Lord Melville and First Lord of the Admiralty. He was in consequence impeached by the House of Commons for refusing to account for a sum of £20,000.

The House of Lords, however, treated this impeachment as a party question. Lord Melville was generally believed to have spent this money for party purposes, and not for his own personal benefit—hence his acquittal. For a long time he had had the entire management of the Scottish elections.

During his rule the patronage of the navy was chiefly employed in the management of Scotch elections, and the following text from the words of the Psalmist was often repeated with bitterness by the Englishmen in the Navy (whose claims were set aside for those of Scotchmen): 'For promotion cometh neither from the east, nor from the west, nor yet from the south.' On Lord Melville's impeachment, Lord Chief Justice Ellenborough took a line of his own, voted against his party and found Lord Melville 'Guilty.' The son of this Lord Melville was First Lord of the Admiralty when Lord Cochrane was tried in 1814.

Psalm
lxxv. 6.

All these events took place before Lord Cochrane appeared on the scene as a naval reformer. Unfortunately his habitual disregard of truth injured the causes that he advocated and enabled his adversaries to crush him in debate. Then again he used his position in the House of Commons to enable him to attack the officers under whose orders he had served. If those persons, who have hitherto judged Lord Cochrane as a naval reformer only from the extracts from Hansard that are to be found in the Dundonald biographical literature, would take the trouble to read up the whole debate, they would see what a wrong impression of the debates are left by these extracts. For instance, Lord Cochrane's motion of July 7, 1807, is really an attack on that gallant sailor Sir R. Keats, the hero of the second battle of Algeciras. And whenever Sir Edward Pellew, (afterwards Lord Exmouth,) who also had a seat in the House, is found differing from Lord Cochrane I am inclined to think that Lord Cochrane was in the wrong. The Navy was still honeycombed with abuses, none of which appears to have been removed by Lord Cochrane's injudicious conduct. If, like the Naval Commissioners, he

had carefully restricted himself to facts, he might have done a great deal of good instead of a great deal of harm. Mr. Fortescue considers that the violence of his personal animosity against Lord St. Vincent was the chief cause of his being a failure in the House of Commons.

Lord Cochrane attacked the prize-courts, but one of the worst of the scandals of the day was the existing system of sharing prize-money. Too large a portion went to the officers: captains received three-eighths, unless when acting under the orders of an admiral, in which case the admiral received one of the eighths that would otherwise have gone to the captain, the other commissioned and warrant officers took two-eighths, and the whole of the ship's company had to be satisfied with the remaining three-eighths, so that a captain when not under an admiral received as much as all the seamen and marines put together.

One of the reforms brought in in 1808 gave an additional eighth to the petty officers and crew, which was deducted from the three-eighths which had hitherto been given to the captains and admirals. This aroused the ire of Lord Cochrane. In a speech that he made in the House of Commons on March 24, 1812, he declared '*that it was the diminution of the prize money by recent regulations which principally induced him to leave the profession for the last two or three years.*' How it would have angered him if he could have known that in these days the actual captors are not considered to have any special claim to prize-money.

Admiralty
Circular.

'Autobiography,' ii.
280, first
edition.

The 'Autobiography of a Seaman' says that the two debates of July 5 and 8, 1813, brought upon Cochrane the vengeance of the Admiralty. Those who will take the trouble to read Hansard will see that he could get no support in the House except from his colleague Sir Francis Burdett, and that he was utterly crushed by Croker, the Secretary of the Admiralty.

I am in entire sympathy with a part of the resolutions that Lord Cochrane brought forward on July 5, and only regret that they were supported by statements which were proved to be incorrect. Lord Cochrane instanced the cases

of Ford and Milton who had served in the *Impérieuse*, but it is worse than useless to bring forward cases of hardship in either House unless the assertions made can be completely sustained.

Mr. Croker read letters from the wives of Ford and Milton and produced other documents which contradicted the case made on their behalf by Lord Cochrane.

Another statement of his Mr. Croker refuted as follows :

The noble lord declared that he had discharged sixty men belonging to the *Pallas* in consequence of their incapacity, and risked all the responsibility of the measure at the hazard of a court-martial. If the noble lord did so, he would tell the noble lord he had done that which he ought not to have done,—he had falsified the books of the ships entrusted to his honour and his care—[Hear, hear]—for the books he had signed with his own hand contradicted his positive assertion.

See Hansard, July 7 or 8, 1813.

The fact was that fifteen men only had been discharged from the *Pallas* within the period mentioned by the noble lord, no such entry there appeared, and he could not have exchanged them for supernumeraries, because, from these books it was seen that only twenty-nine supernumeraries had been taken on board. This fact Mr. Croker satisfactorily established by recapitulating *seriatim* the cases of the individuals discharged.

CHAPTER III

COLLINGWOOD AND LORD COCHRANE

IN September 1807 Lord Cochrane was ordered to join the Mediterranean fleet, and at the end of the year the *Impéri-euse* was sent by Lord Collingwood to the Adriatic with orders to relieve the senior officer of the squadron stationed there. Before the command was handed over to him, Lord Cochrane captured three vessels near Corfu that were furnished with passes from the officer he was about to supersede. The 'Autobiography' says: 'I sent them to Malta for adjudication, and they were, I believe, condemned.' Now Lord Cochrane must have known whether they were condemned or not, for if they were, he received the prize-money. Whether the writer of the Autobiography knew what became of them is another matter.

'Autobiography,' i.
238.

On hearing of these captures, the naval officer in question complained to Lord Collingwood. We are told in the 'Autobiography' that *Lord Collingwood acted on the representation without making enquiry into its cause, and the consequence was my recall to receive further orders from his lordship, this amounting to my deposition from the only command of a squadron that was ever offered to me.* The 'Autobiography' goes on to say that Lord Collingwood left his traducer to continue his pass trade with impunity.

From what we know of Lord Collingwood from contemporaries, he was not at all the sort of man who would be guilty of such an act of injustice, as to condemn a man unheard.

I may as well remark that in all our wars, questions have arisen concerning passes given by senior officers both naval and military. In a sea full of islands, like the

Adriatic, it is very desirable to remain on friendly terms with some of them, especially those where the enemy had no garrisons. They can then be utilised as bases for obtaining fresh meat, vegetables, wood, and water. Such an arrangement greatly facilitates the continuance of the blockade of the more important harbours, and I think it quite possible that the officer in question acted with perfect propriety. For instance, Wellington when in the Peninsula gave passes to merchant vessels, and I do not suppose that his motives will be questioned. I can, also, understand that Lord Collingwood thought Lord Cochrane's ideas of personal gain should not be allowed to interfere with a wiser policy, and that he therefore removed him to a station where he was less likely to meet with pecuniary temptation.

Had the name of the officer in question been given, it is quite possible that a crushing reply might have been forthcoming when the 'Autobiography' was published.

During the last six months of 1808 the *Impérieuse* was employed on the north-east coast of Spain in assisting the Spaniards to resist the French. Without accepting the whole of the accounts of Lord Cochrane's services on the coast as detailed in the 'Autobiography,' I freely admit that they most deservedly added to his nautical reputation. This, coupled with the fact that he had previously suggested a fire-ship attack on a French squadron in Basque Roads when in the *Pallas* in 1806, caused him to be consulted by the Admiralty in 1809 as to what means could be adopted for attacking the French fleet at that anchorage.

CHAPTER IV

AIX ROADS

My principal object in dealing with what took place in Aix Roads in April 1809 is to show how false has been the impression made, in reference to what really occurred, on those who are so simple as to believe that a large number of naval officers committed perjury, forged charts, or connived at forgery, on the sole testimony of Lord Cochrane, and the so-called 'Autobiography of a Seaman.'

Ten French line-of-battle ships, the *Calcutta* storeship (which at a distance looked like a line-of-battle ship) and some other men-of-war were in Aix Roads, blockaded by a British fleet of nearly the same force that lay in the outer anchorage of Basque Roads. The French fleet had originally consisted of eleven ships-of-the-line, but about a month previously one of them, the *Jean Bart*, 74, had run aground while shifting her berth from Basque Roads to Aix Roads. She had in consequence become a total wreck. What was left of her remained on the Palles shoal alike a beacon and a warning to the British, as to dangers of navigation in those anchorages.

'Memorilas
of Lord
Gambier,' i.
253.

Admiral Lord Gambier commanded the British fleet. He was then fifty-three years of age. He came of a good Huguenot family, and held strong religious views which were not at all to the taste of Lord Cochrane, or of Admiral Harvey, and other naval officers of that period. He objected to swearing, and would allow none but married women on board his ship. Lord Cochrane says that he distributed tracts. Fifteen years previously he had

commanded the *Defence*, 74, at 'the glorious first of June.' James writes: 'The *Defence* in bearing down being rather in advance of her own line had the good fortune to be first in cutting through that of her enemy.' She was handled in a manner which did credit to all on board, was in the thick of the fight, and had all her masts shot away. Admiral Gambier had recently been rewarded by a peerage for his services in command of the fleet that had co-operated with Sir Arthur Wellesley, in the well-managed and successful expedition to Copenhagen in 1808.

James,
'Naval
History,'
(ed. 1837.)
i. 158.

The Admiralty were naturally desirous of destroying the French fleet. In 1799 a Spanish squadron lay at Aix Roads and the use of fire-ships had been suggested. In 1807 Sir R. Keats and Lord Cochrane had made similar suggestions. If, however, fire-ships were made use of, there was great danger of their being boarded by the enemy's boats, and of their scanty crews being killed before they could close with the ships they meant to burn. To obviate this risk Lord Cochrane proposed that explosion vessels should precede the fire-ships, so that their explosion might deter the French from boarding the fire-ships as they might be expected to believe that they were explosion vessels also.

Three explosion vessels and about twenty fire-ships were fitted out. The Admiralty sent Lord Cochrane in the frigate *Impérieuse* to join the fleet at Basque Roads, and gave orders that he was to command the attack. The admirals of both the French and British fleets had given orders as to what was to be done if they were attacked by fire-ships. The French fleet had seventy-three boats at its disposal, and had placed a boom in front of their ships. Notwithstanding the careful reconnoitring of Lord Cochrane and other officers, the existence of this boom was unknown until the attack was made, and nothing could be seen of it on the morning after the attack. From that I infer that it was probably a very light one. A French officer belonging to the *Océan* describes it as composed of strong cables of the smaller kind, floated by large logs of wood and other materials, but held together by strong anchors. On

'Trial of
Lord Gam-
bier,' p.
113.

Appendix
to the
'Trial of
Lord Gam-
bier,' p. 35.

'Memorials
of Lord
Gambier,'
ii. 308-12.

April 8 the French naval officers applied for materials to enable them to make a second boom, but the second boom was not ready when the attack was made on the 11th.

When Lord Cochrane arrived he found that the fleet had already begun to prepare fire-ships, and that Admiral Harvey, who had commanded the 'Fighting old *Téméraire*' at Trafalgar, had expected to have the honour of commanding them. Admiral Harvey was furious at being put aside in this manner. He used most insubordinate language to Lord Gambier, and was in consequence tried by court-martial and dismissed the service. Sympathy with his gallant conduct at Trafalgar caused him to be restored to the service a few years later, but I have never heard that he construed this restoration into an acknowledgment of his not having done what he was accused of.

'Trial of
Lord Gam-
bier,' pp.
120-1.

On March 27 Lord Gambier reconnoitred the enemy's position in the *Unicorn* frigate, accompanied by Captain Bedford of the *Caledonia*. He observed that the enemy were returning to their works on the Boyart shoal, half-way between Oléron and Aix. On April 1 he sent in the *Amelia* frigate and *Conflict* brig to disperse the workmen, which they did. These are the works he had described as 'no obstacle' in his letter of March 11.

There was great uncertainty as to the exact position of certain shoals between Basque Roads and Aix Roads, and also as to the depth of the channels between them. All muddy rivers have shoals at their mouths, whose position is constantly undergoing change. In consequence of this the latest chart of an estuary is probably the most correct. Lord Cochrane pinned his faith to the *Neptune François*, which contained a French chart of the roads in question. Lord Gambier and the navigating officers of his ship, Messrs. Fairfax and Stokes, relied on a newer French chart taken out of the *Armide* when she was captured in 1806. The *Armide* chart appears to have been copied by hand, and soundings that had been taken from time to time by the officers of various British vessels that had been employed on this coast had been added to it.

See Chart
opposite p.
106 of
'Trial of
Lord Gam-
bier,' and
p. 150.

After the court-martial on Lord Gambier, Lord Cochrane

asserted that this chart was forged, made up for the occasion by Mr. Lavie, Lord Gambier's solicitor. If it was a forgery then its forgery must have been connived at by Lord Gambier, by his flag-captain Sir Harry Neale, and many other officers must have been in complicity with the forgers.

Though I am sorrowfully prepared to admit, that from time to time there have been individual officers in the British Navy who, though possessed of admitted courage and ability, have been wanting both in truth and honour, yet I decline to believe that the standard of honour in the British Navy ever fell so low as to admit of a whole ring of officers conspiring together to forge charts for the purpose of influencing the result of a court-martial which did not affect them directly. I decline to believe that the majority of the members of a court-martial would have supported their attempt to do so, or that a Board of Admiralty would have been guilty of aiding and abetting such an enormity.

But if we are to believe the 'Autobiography,' not only English naval officers, but French naval officers also conspired to forge charts. At p. 36, vol. ii. of the 'Autobiography' we read :

A chart of Aix Roads based on a modern French chart has recently been shown me, as on the point of being issued by the Board of Admiralty, on which chart the main channel between the Isle d'Aix and the Boyart sand is laid down according to charts copied from fabricated charts produced on Lord Gambier's court-martial, and not according to the Hydro-graphic Charts of the *Neptune François*. The comparatively clear anchorage shown in the new chart is also filled with Mr. Stokes's imaginary shoals! the result being that no British Admiral, if guided by the new chart would trust his ships in Aix Roads *at all*, though both under Admiral Knowles, and at the attack in 1809, British ships found no difficulty whatever from want of water, or other causes when once ordered in.

'Autobiography of a Seaman,' pp. 36 and 37 and p. 255, 1890 edition.

The above quoted passage is untruthful. All the four line-of-battle ships that were sent in in 1809 were at one time aground. The *Impérieuse* and some other vessels got on shore also.

‘Autobiography,’
ii. 37 and
p. 255 in
1890
edition.

The solution of the matter is not difficult. For the purpose of deterring a future British fleet from entering Aix Roads, the modern French Government appears to have followed the chart of Mr. Stokes in place of their former official chart; and the British Admiralty, having no opportunity of surveying the anchorage in question, has copied this modern French chart; so that in future the fabrications of Mr. Stokes, or rather I should say the ingenuity of Lord Gambier’s solicitor, or whoever may have palmed the chart on Mr. Stokes, will form the best possible security to one of the most exposed anchorages on the Atlantic coasts of France. Assuredly no British Admiral, with the new chart in his hands,—should such be issued,—would for a moment think of operating in such an anchorage as is there laid down, notwithstanding that former British fleets have operated in perfect safety as far as soundings were concerned.

The ‘Autobiography’ was published in 1860.

The above-quoted passage is tantamount to an acquittal of Lord Gambier by the writer of the ‘Autobiography.’ I have myself examined an Admiralty Chart of Aix Roads, dated 1829, and a later chart dated 1870. I have compared them with the charts contained in the ‘Autobiography’ and in the ‘Trial of Lord Gambier.’ They are not mere copies of the chart printed in the minutes of the court-martial, but are evidently drawn up from an independent survey. One question in dispute was whether there was a broad channel between the Boyart shoal and the Palles shoal which gave easy access to the anchorage of Les Grandes Trousses. If so, there was a safe place to which a damaged line-of-battle ship might be able to retire for the purpose of refitting at almost any time of tide. Lord Cochrane said there was. Messrs. Fairfax and Stokes of the *Caledonia*, and the French Admiralty in their more recent chart, say there was not.

Nearly the whole of the quarrel between Lord Cochrane and Lord Gambier hinges on the questions connected with the exact positions of the various shoals in Aix Roads and of the channels between them.

‘Trial of
Lord Gam-
bier,’ p.
134.

The French fleet was protected on the north side by batteries on the Isle d’Aix. Various accounts have been given of their strength. Lord Cochrane in his evidence says

that there were thirteen guns mounted. If we are to believe Lord Gambier and Sir Harry Neale, Lord Cochrane told them on his return from reconnoitring that he had seen five furnaces for heating hot shot. He also told Sir Harry Neale that he had seen eighteen hundred men on that island. There was a distant mortar battery on Oléron, some of whose shells went over our ships without striking any of them. The French had begun a new work on or near the Boyart, between the Isles of Aix and Oléron, which was described by Lord Gambier as 'no obstacle'—words which the 'Autobiography' unfairly accuses him of applying to the Aix batteries.

A writer in the 'Naval Chronicle' who dates his letter 'At sea off the Isle of Oléron, July 25th, 1799,' describes the fort as being

'Naval
Chron.' ii.
352.

'Memorials

as strong as the best engineer the French had in 1782 could make it. The interior work or citadel is elevated considerably, and has many guns mounted on the new manner, *en barbette*, by which these are worked without danger, as was shown off Corsica, where one gun only disabled two of our line-of-battle ships. . . . Fire-vessels might probably have been employed with success had they been sent in.

Gambier,
p. 327.

The Martello towers on our south-eastern coast were built in consequence of the above-mentioned and other similar Mediterranean experiences.

As regards the size of the guns on Isle d'Aix, Captain Rodd of the *Indefatigable* described the hole made in his topmast by one of them as seven inches in diameter, and an officer of the *Revenge*, writing on April 13, 1809, mentions a 42-pound shot in her bowsprit. Captain Kerr of that ship says in his evidence that this shot came from the Isle d'Aix.

On the night of April 11 there was a strong wind from the northward. With the flood-tide in their favour, two explosion vessels and the fire-ships proceeded on their dangerous errand. The *Lyra* and *Redpole* brigs had been previously sent in with orders to anchor, the one on the Boyart shoal, and the other on the edge of the shoals near

Trial of
Lord Gambier,
p. 178.

the Isle d'Aix. Mr. Fairfax, Master of the Fleet, was on board the *Lyra*, which took up a position at a distance of about a mile and a quarter from the enemy. The *Aigle* and *Impérieuse* frigates were anchored near the *Lyra*, but a little farther out. The fire-ships were to steer between the *Redpole* and the *Lyra*.

p. 177.

Lord Cochrane took charge of one of the explosion vessels. He lit the fuze himself before he abandoned her. Unfortunately the explosion was premature as the fuze only burnt six minutes instead of twelve or twenty. The explosion, according to Mr. Fairfax, was near enough to the *Lyra* to endanger her. Lord Cochrane declared that the explosion vessel reached the boom and destroyed it by means of the waves caused by the explosion. Captain Wolfe of the *Aigle* said he thought that the explosion vessel blew up abreast of the Isle D'Aix.

p. 206.

Compare
this with
pp. 250 and
251 of 'A
Mariner of
England,'
published
by John
Murray.

The fire-ship fitted out by the *Caesar* went in before the *Mediator*, and before the explosion vessels. As the explosion vessels were to go in first, she brought to and waited. Lord Cochrane's explosion vessel blew up close to her, killed two men on board of her, and damaged one of the boats in which the men were to come away. Acting-Lieutenant Flintoff¹ and one man died of fatigue at the bottom of the damaged boat. Both boats were picked up by the *Lyra*. This was the only direct damage that, as far as I can find out, Lord Cochrane ever did at any time of his life in an explosion vessel. The indirect damage, however, was enormous, as the explosion vessels caused a panic in the French fleet, whose boats were, in consequence, afraid of grappling the fire-ships.

Admiral
Stopford's
evidence,
'Trial of
Lord Gambier,'
p. 182.

p. 124.

Lord Gambier in his defence said that several officers who commanded the fire-ships, believing that the explosion had taken place near the enemy and fleet, steered their ships for that point and set them on fire accordingly, thereby endangering our advanced frigates. Lord Cochrane accuses the officers on board the fire-ships of abandoning their fire-ships, so as to avoid the 'terrible pull back' to the

¹ The *Mariner of England* (p. 250) calls him Winthorpe.

fleet against wind and tide. They had, however, the advanced frigates and brigs to which they could return, had they lit up abreast of them ; and I prefer to accept Lord Gambier's explanation to one that involves the volunteer crews of the fire-ships in a charge of cowardice and laziness.

When her crew leave her, a fire-ship has to steer herself. It is a very difficult thing for an officer to arrange the sails of a vessel at night-time so that she will keep her course with no one at the helm, more especially so if the officer in question has had no previous experience in handling that particular vessel. If my non-nautical readers will watch the vagaries of little sailing boats on the Serpentine or on any other pond, it will give them some idea of the irresponsible possibilities of an abandoned fire-ship. One fire-ship fouled an explosion vessel that was secured astern of the *Impérieuse* and she had to be cut adrift.

Some vessels, however, managed to steer straight enough. For instance, Lieutenant Cookesley hailed the *Aigle*, asking Captain Wolfe to keep his eye on him as he did not mean to fire his ship until he was among the enemy. Captain Wolfe did so and saw him run on board a two-decked ship. What more could man do ?

The *Mediator*, commanded by Captain Wooldridge, appears to have been a larger vessel than any of the other fire-ships. Captain Wooldridge and those on board of her also claim to have broken the boom, a claim which is allowed by all historians previous to the publication of the 'Autobiography of a Seaman.' At any rate the Mediators stuck to their ship as long as it was possible to do so. The gunner of the *Mediator* was killed, Captain Wooldridge was severely burnt, Lieutenants Clements and Pearls were slightly burnt—the last three being blown out of the *Mediator* after she was set on fire.

The Autobiography states that only four of the fire-ships reached the enemy's position, and not one did any damage. This is contradicted by an intercepted letter written by a French officer belonging to the *Océan* three-decker, who has described the events of that night as follows :

'Autobiography,'
i. 376-7.

'Trial of
Lord Gambier,' p.
206.

'Autobiography,'
i. 401.

See also
'Mariner of
England,'
p. 246.

'Trial of
Lord Gambier,' p. 14.

'Autobiography,'
i. 379.

' Memorials
of Lord
Gambier,'
ii. 309.

The *Regulus* cut her cable to get clear of the vessel that threatened to burn her, and thereby forced the *Océan* to do the same, then three fire-ships made for them and obliged her to cut this second cable. The *Océan* grounded at about ten o'clock and immediately afterwards a fire-ship in flames grappled her across the stern. They endeavoured to bear off the fire-ship with spars, and to cut the chains of the grapnels that hung from her yards, but the *chevaux-de-frise* on her sides prevented them from getting clear of her. The flames from the fire-vessels covered all her poop. After a desperate struggle in which fifty men lost their lives, the *Océan* cleared herself from the fire-ship only to be attacked again on the starboard quarters by another vessel whose mainmast they were fortunate enough to shoot away thereby causing her to alter course.

All the rest of the night [says the French officer] we were surrounded by vessels on fire; our guns were constantly firing on the English boats which towed a part of their fire-ships. The one that had grappled us by the stern was towed by a boat manned by sixteen or twenty men. We fired on her and obliged her to let go the tow.

On the morning of April 12 the whole of the enemy's fleet were on shore in a helpless condition, with the exception of two ships-of-the-line, the *Foudroyant* and the *Cassard*. A large portion of their crews had left their ships.

This state of affairs appears to have been utterly unexpected. No arrangements had been made for dealing with such a contingency either by Lord Gambier or Lord Cochrane. Captain Poo Beresford afterwards told Lord Cochrane in the House of Commons, that it was his own fault that more ships had not been destroyed, and that he ought to have followed the advice given to him by an officer senior to himself, which was to keep some of his fire-ships in reserve. From the evidence that he gave at the court-martial, I think that Captain Pulteney Malcolm probably was the officer referred to.

' Trial of
Lord Gam-
bier,' p. 211.

pp. 34 and
38.

There are as many contradictory accounts as to what took place during that day, as there are as to what took place during the previous night. Lord Cochrane swore that the log of the *Impérieuse* as presented by her master, Mr. Spurling, was incorrect in some of its most important

particulars, and produced a log of his own, which on cross-examination he admitted he had drawn up in London. There was a third log of the *Impérieuse*, the document that he had given to Lord Gambier as the ship's log when he left Basque Roads. The log made up in London contained some additions to the second log, one of which was meant to inculcate Captain Rodd of the *Indefatigable*. All three logs are printed in the Appendix to the trial. Lord Cochrane accused the master's mate of the *Beagle* of having tampered with that ship's log. I shall give Lord Gambier's remarks on these logs in my account of the trial.

' Trial of
Lord Gam-
bier,' pp.
131-3.

It is, however, clear that Lord Cochrane did his best to destroy the enemy's ships on that day and to induce Lord Gambier to send in the fleet. As the flood-tide came in, the French set to work and removed the two line-of-battle ships that had remained afloat, so they were no longer in a position to support the vessels that were aground. At about half-past twelve the *Etna* bomb and gun-brigs *Conflict*, *Insolent*, and another gun-brig, passed the *Impérieuse*, which was still at anchor, and commenced the action. Nearly half an hour afterwards the *Impérieuse* weighed and followed them. An hour later two 74's, the *Valiant* and *Revenge*, were sent in to attack the ships on shore. They were accompanied by five frigates and seven smaller vessels. Lord Cochrane says that the *Calcutta*, a former East Indiaman, then a well-armed store-ship, struck to the *Impérieuse* alone—a statement which is contradicted by Captain Bligh of the *Valiant*, Captain Rodd of the *Indefatigable*, and Mr. Stokes of the *Caledonia*. Mr. Stokes said that he saw a shot from the *Calcutta* strike a boat astern of the *Impérieuse*, after the *Aigle*, *Unicorn*, and *Emerald* had opened fire on her. Captain Newcomb of the *Beagle* said that his second lieutenant, who had been away sounding, noticing that the *Calcutta* was abandoned by her crew, boarded her at the same time as a boat from the *Impérieuse*. The *Aquilon* and *Varsovie*, 74's, surrendered, and the men who had remained on board of them were taken prisoners. The *Tonnerre* was abandoned and set fire to by the French. The British burnt their prizes also.

p. 5.

pp. 151 and
155.

p. 197.

p. 197.

' Trial of
Lord Gam-
bier,' p.
155.

As the tide fell the British drew off, the *Revenge*, *Valiant*, and the *Impérieuse* all got on shore, the latter striking heavily. Had a breeze sprung up in the wrong direction they would probably have shared the fate of the *Jean Bart*. Captain Bligh in his evidence said that the *Valiant* was in a very perilous situation, nothing but the wind shifting and blowing directly out could have saved her from being wrecked.' During the night the line-of-battle ships *Caesar* and *Theseus* were sent in to support the inshore squadron.

p. 129.

p. 11.

p. 198.

p. 203.

On the morning of the 13th, Admiral Stopford, who was on board the *Caesar* which had been on shore for three hours, ordered the line-of-battle ships out on his own responsibility. The *Impérieuse*, *Pallas*, *Etna* bomb, and some other vessels remained in Aix Roads for some time longer. The *Etna* continued to throw shells until her thirteen-inch mortar had split, and her ten-inch shells had been expended. Mr. Congreve, too, remained on board the *Whiting* schooner to see his newly invented rockets thrown, but nothing serious was attempted. On the 14th the *Impérieuse* was recalled to Basque Roads, and Lord Cochrane's place as senior officer of the inshore squadron was taken by Captain Wolfe of the *Aigle*. From the 15th to the 24th the attack was continued by bomb-vessels supported by the gun-brigs. One French frigate was wrecked at the mouth of the Charente, another was burnt by her crew after Lord Cochrane had left.

At the close of the operations, the losses of the French were as follows: The *Aquilon*, *Ville de Varsovie*, 74's, and *Calcutta* storeship of 56 guns had been captured and burnt. The *Tonnerre* had been burnt by the French. The *Tourville*, *Regulus*, and *Patriote*, 74's, were so damaged as to be unfit for sea, and were to be cut down and made into mortar-vessels. The *Océan* and *Foudroyant* had saved twenty-six guns each, but had thrown overboard all their stores and had cut away their anchors and cables. The *Cassard* of 80 guns was worth repairing. The *Jemappes*, 74, was uninjured. One frigate had been wrecked, and another had been burnt by the French, and two frigates had escaped.

The French fleet had ceased to be 'a fleet in being,' and the greater part of the British fleet that had previously blockaded Aix Roads thus became available for other purposes.

When the *Impérieuse* came out from Aix Roads, Lord Cochrane went on board the *Caledonia* and had an interview with Lord Gambier. Though he complained of the conduct of some of the officers commanding the fire-ships and smaller vessels, *he said nothing to cause Lord Gambier to believe that he had any cause of complaint against him.* Lord Gambier ordered the *Impérieuse* to return to England and to take Sir Harry Neale with him, who was to carry the despatches.

On his arrival in England Lord Cochrane told Lord Mulgrave that as member for Westminster he should oppose the vote of thanks to Lord Gambier. The Admiralty called upon him by letter to state the grounds of his objection to the vote of thanks. In his evidence at p. 41 of Lord Gambier's trial, he described this as a very improper proceeding on the part of the Admiralty. He wrote an evasive answer to the Admiralty, referring them to the ship's logs.

This method of attacking Lord Gambier was unwise and recoiled on himself. For if he had boldly come forward as prosecutor, he would have had the right to remain in court during the trial, and of cross-examining the witnesses, instead of leaving it to Mr. Bicknell, who was sent down by the Admiralty, to prosecute.

Lord Gambier applied for a court-martial on his conduct as Commander-in-Chief. His request was granted and a court-martial assembled at Portsmouth on July 20 and sat until August 4, 1809. He was honourably acquitted.

AIX ROADS FABLES

Some of the inaccuracies of the 'Autobiography of a Seaman' may be noticed here.

At p. 41, vol. ii., the writer complains that Captain Austen, 'who was present in Basque Roads, was not examined before the court-martial.' Captain Austen was *not* in Basque Roads during the action. He was then on his way to China.

'Trial of Lord Gambier,' pp. 134-6.

p. 11.

p. 41.

'Memorials of Admiral Lord Gambier' (by Lady Chatterton), ii. 367.

At p. 42, vol. ii., we are told in a note that Lord Cochrane was appointed against his own will to command the attack, 'after all others had declined the enterprise.' I have already mentioned Admiral Harvey's indignation at being superseded in the command of the fire-ships.

'Trial of
Lord Gambier,' pp.
72, 90, 128,
155.

At p. 71, vol. ii., the writer states that the *Revenge* and *Valiant*, line-of-battle ships, and five or six frigates, had found plenty of water and, whilst destroying two of the enemy's ships, had remained there through a whole tide without grounding. If, however, we are to believe the evidence of Admiral Stopford, of Captains Bligh, Kerr, Poo Beresford, and Rodd, and of Mr. Spurling, the master of the *Impérieuse*, the line-of-battle ships *Revenge*, *Valiant*, *Caesar*, and *Theseus*, and the frigates *Indefatigable* and *Impérieuse*, all got aground. The *Impérieuse* struck hard while on the tail of the *Palles*. The *Valiant* had seventeen feet of water alongside while drawing at least twenty-two. The *Caesar* was aground for three hours. In Lord Cochrane's evidence at p. 51, mention is made 'of the line-of-battle ships, most of which had grounded.' An extract from the logs of *Pallas*, *Valiant*, *Unicorn*, *Indefatigable*, and *Aigle* is given to show that they anchored between 2.30 and 4 P.M. in depths varying from $5\frac{1}{2}$ to 7 fathoms. But this was at high water. The *Valiant* and *Indefatigable* grounded at low water. The rise at spring-tides at Basque Roads was 18 to 21 feet at springs and 8 feet at dead neaps.

Evidence of
Mr. Stokes,
'Trial of
Lord
Gambier,'
p. 150.

'Autobio-
graphy.'
'Trial of
Lord Gam-
bier,' p. 150.

At p. 72, vol. ii., the writer says: 'I am writing history—naval history. . . . The subject is, however, one in which the nation is collectively interested, and the national, no less than the naval character involved.' It is for these reasons that I think that the truth of the charges made against Lord Cochrane's comrades deserve investigation.

p. 155.

At p. 392, vol. i., of the 'Autobiography,' we are told that 'there was not the slightest necessity for burning the *Aquilon* and the *Ville de Varsovie*, as they could have been easily got off.' Captain Bligh of the *Valiant* swore that the water was up to their orlop decks when he ordered them to be set on fire.

At p. 352, vol. i., the 'Autobiography' tells us that when a partial attack was reluctantly made, 'neither ships nor bombs' suffered from the fire of the batteries on the Isle d'Aix. Now Captain Kerr of the *Revenge* said in his evidence, that his bowsprit was severely wounded, that the quarter-deck beam was shot away, that she received a number of shots in different parts of the hull, including one between wind and water, that 3 men were killed and 15 wounded, two of whom afterwards died of their wounds, all of which damage was done by the batteries of the Isle d'Aix. The *Indefatigable*, too, had a shot through her topmast fired from the Isle d'Aix. The loss of the *Revenge* was greater than that suffered by the *Impérieuse*. If her log is correct on this point, the *Impérieuse* lost 3 killed and 10 wounded. In the 'Autobiography,' vol. ii. p. 58, this evidence is summed up as follows: 'Captain Kerr was consequently recalled whilst Captain Malcolm *was under examination* to say that his ship was *once* hit by the batteries.' This is a deliberate misrepresentation. He gave evidence that his ship was only once hit on the 13th, the rest of the damage was done on the 12th.

'Trial of Lord Gambier,' pp. 208-9.

p. 89.

Italics in the original.

The distance of the fleet from the scene of action varies very much in the 'Autobiography.' Before the fleet moved in on the 12th it is stated (vol. i. p. 399) that Lord Gambier was more than a dozen miles from the scene of action. At p. 380 it is stated that he was with the fleet fourteen miles distant. In his evidence at the trial, Lord Cochrane describes the British fleet as being, to the best of his judgment, 'eight and nine miles—I think nine miles distant from the French fleet.' According to the log of the *Caledonia* and the evidence of Mr. Fairfax, who took angles to find the position of his ship, it was six miles distant from the Isle d'Aix.

'Trial of Lord Gambier,' pp. 32 and 142.

'Memorials of Lord Gambier,' ii. 116.

As regards the position taken up by the fleet on the morning of the 12th, the 'Autobiography' (vol. i. p. 350) says that Lord Gambier was never nearer than nine miles of the scene of action, but at p. 384 we are told that he approached within seven or eight miles of the grounded ships, and anchored about three and a half miles from the

' Trial of
Lord Gambier,' p. 77.

Isle d'Aix, just out of range. But according to the evidence of Admiral Stopford, the fleet was rather more than three miles distant from the Isle d'Aix.

' Autobiography,'
pp. 373, 400,
402.

Lord Cochrane declared that his explosion vessel caused a wave which washed away the whole of a boom a mile long that was in front of the enemy's fleet. He describes this boom as 'the most stupendous structure of the kind on record.' According to him, it was a double one composed of large spars, bound by chains, and moored with one hundred anchors. He also quotes a letter from *The Times* of May 4, 1809, in which it is stated that the mouth of the Charente was completely blocked with wreck. This wreck, he declares, must have been that of the boom, as no ship was wrecked.

p. 420.

Lord Cochrane says that at daylight on the 12th not a spar of the boom was visible. I am therefore inclined to believe that its size and strength have been greatly exaggerated. Parts of the boom moreover must have been farther from the explosion vessel than Lord Cochrane himself was, when the explosion took place. Such a terrific wave would have swamped Lord Cochrane's boat instead of merely endangering it. One hundred anchors in a mile sounds rather a large order. As regards the floating wreck, the writer forgets the two explosion vessels that were blown to pieces, the twenty fire-ships driven on shore in rough weather, to say nothing of the stores thrown overboard to lighten the French ships, or of the fragments of their burnt ships which must have floated about for a considerable time after the engagement.

' Memorials
of Lord
Gambier,'
ii. 308,
309.

The intercepted letter from the French officer already referred to, dated April 10, describes the boom as follows: 'It is composed of strong cables of the *smaller*¹ kind, and is floated by large logs of wood, and other materials; it is held by strong anchors, and covers all the part whence the current comes towards our fleet.'

On April 15, after the attack, the same officer wrote:—

On the 8th April anchors, cables and other materials necessary to make a second boom were applied for, and it is clear that it

¹ The italics are mine.—Ed.

would have been of the greatest service, to guard us from the enemy's fire-ships. The coast is covered with the remains of the fire-ships and of our ships that were burnt.

From this I gather that the boom was a light single boom, only strong enough to keep out boats and fire-ships in a light wind. It blew hard on the night of the 11th. The *Mediator* was an old Indiaman of 800 tons, and eight of the fire-ships were the largest of the transports that supplied the fleet. They broke through the boom when they came in contact with it, though the fire-ships appear to have been checked, until the arrival of the *Mediator*. If it had not been for the report of those on board the *Mediator*, I do not see how Lord Cochrane could have known of the existence of this boom, until prisoners had been taken.

' Trial of
Lord Gambier,' pp.
121-2.

Captain Proteau of the French frigate *Indienne* says that he saw something floating at the boom, and that it exploded. His statement may be true, or it may be that he described the explosion as having taken place nearer than it did, as an excuse for his own conduct. If true, however, it only follows that the part of the boom nearest the *Indienne* was broken.

The ' Autobiography ' states that Captain Wooldridge ¹ claimed to have destroyed the boom and says :

' Autobiography,'
present
Earl's edition, p. 231.

This statement was made by Captain Wooldridge not only to Lord Gambier but to the officers composing the subsequent courtmartial; more strangely still it was *accepted by those officers*.²

Captain Wooldridge gave no evidence at the court-martial. I cannot find that he ever claimed to have done more than to break through it, and, by so doing, let the nearest fire-ships in also. Next day the French probably had to cut some of the lashings of the boom to let their own boats through, and to get a clearer space for moving their ships. Lord Cochrane complains that every naval

¹ Having been severely burnt in the *Mediator*, he was not likely to have been a witness of subsequent proceedings.

² Italics in original.

history since 1809 has given Captain Wooldridge the credit of having broken the boom. That he did not do so, therefore, rests solely on statements contained in the 'Autobiography of a Seaman.'

I have already mentioned the gallant manner in which the officers and crew of the *Mediator* stuck to their ship.

I cannot find that Lord Cochrane ever claimed to have destroyed the boom until 1847. It is not until thirty-three years after the event, when most of those who were at Basque Roads were dead, that this attempt was made to filch the honour of having broken the boom from Captain Wooldridge.

'Admiral
Stopford's
Evidence,'
p. 72.

The fact of the *Caesar* having been three hours aground on a continuation of the Boyart, or else on a separate bank in the direction of that shoal, is, I think, fairly good proof that there were impediments in the way to the anchorage in question.

'Autobio-
graphy,' i.
374.

The 'Autobiography' contains the following passage:—

The fortifications on Isle d'Aix alluded to by Admiral Allemand, were, as Lord Gambier had reported to the Admiralty, in his letter of March 11, insignificant, or as his Lordship at first expressed it, 'no obstacle'; a dozen guns being the utmost number mounted on the batteries commanding the roads, though these were afterwards characterized by his Lordship as the 'strong works on the Isle of Aix.'

Now this is one of the most unscrupulous misrepresentations that occurs in the book. Lord Gambier did no such thing. He wrote on March 11:

'Trial of
Lord Gam-
bier,' pp.
114-15.

'Autobio-
graphy,' i.
p. 342.

The advanced work between the Isles of Aix and Oléron, which I mentioned in my last letter, was injured in its foundation, and is in no state of progress; that is, therefore no obstacle to our bombarding the enemy's fleet, if you should be disposed to make an attempt to destroy it.

'Trial of
Lord Gam-
bier,' p. 120.
'Memorials
of Lord
Gambier,'
ii. 108, 109,
and 370.

This refers to the work on the Boyart shoal. On April 1 the *Amelia* frigate and the *Conflict* brig dispersed the men at work on the Boyart, and, if we are to believe a letter of a French officer, sent a boat on shore which carried off their tools.

Lord Cochrane himself told the court-martial that the enemy's fleet were flanked towards the *north* by thirteen cannon on the Isle d'Aix, besides the mortars on that island.

' Trial of
Lord Gambier,' p. 31.

At the trial Lord Gambier asked Sir Harry Neale the following question :

Q. What number of furnaces for heating shot did Lord Cochrane report to me that he had observed in the fort of the Isle d'Aix, in reconnoitring previous to the 11th of April ?

A. I did not hear him report to you, but he reported to me on his return from reconnoitring, I think on the 5th of April, that he had seen some eighteen hundred men, and five furnaces burning at that time.

He afterwards stated that Lord Cochrane had told him that the *west* end of the battery was in a state of rubbish. Lord Gambier also says in his defence that Lord Cochrane had reported to him that there were five furnaces for heating shot.

pp. 134,
186.

This 'no obstacle' fable is repeated again and again. Whether Lord Gambier made a mistake or not on April 12 is a matter of opinion. Judging after the event I think that Lord Gambier would have done better had he shifted his flag on the morning after the attack into a smaller vessel and done his own reconnoitring, and that if Lord Cochrane had commanded the fleet, his reliance on the obsolete chart contained in the *Neptune Français* would have caused the loss of several of our ships, which would have shared the fate of the *Jean Bart*. Lord Gambier is at any rate entitled to fair play, a treatment which no man ever received who differed from Lord Cochrane. He should be judged by what he actually did, and not by misquoted letters, or by the fables to be found in a book written with the avowed purpose of pushing certain money claims.

CHAPTER V

TRIAL OF LORD GAMBIER

AFTER the affair at Aix Roads the Ministry resolved to ask Parliament to pass a vote of thanks to Lord Gambier and the fleet. Lord Cochrane was ill advised enough to object to the action of the Government. He went to the Earl of Mulgrave and said that as a Member of Parliament he would oppose the vote on the ground that Lord Gambier had failed in his duty to destroy the French fleet. On hearing of Lord Cochrane's conduct Lord Gambier demanded a court-martial to enquire into the whole subject. This demand was granted, and the court-martial sat in July 1809, and honourably acquitted Lord Gambier.

'Trial of
Lord Gam-
bier,' pp.
25-30.

p. 33.

pp. 38 and
40.

p. 41.

The first witnesses were called to prove the logs of their respective ships. Mr. Spurling, master of the *Impérieuse*, produced the log of that ship. But Lord Cochrane produced a log of his own and swore that the log of the *Impérieuse* was incorrect. These two logs are printed in the Appendix to the trial and are in flat contradiction on several important points. Lord Cochrane admitted that previous to the attack on April 11 he had received every assistance from Lord Gambier, Admiral Stopford, and the captains of the fleet, and that the frigates and smaller vessels had been very judiciously placed on the evening of the 11th. Lord Cochrane repeatedly refreshed his memory from a paper that he had drawn up in London in June, after he knew that a court-martial was to take place, but which he declared was drawn up from notes made at the time. Lord Cochrane said that the Admiralty had done a very improper thing in writing to him with reference to his conduct in Parliament anent the vote of thanks, but

to me it seems hard to see what else the Admiralty could have done.

' Trial of
Lord Gam-
bier,' p. 45.

He complained of Lord Gambier's unnecessary delay in attacking the enemy. In his opinion two or three line-of-battle ships ought to have been sent in at daylight on the 12th, supported by the frigates, and that after the two French line-of-battle ships that remained afloat had been moved towards the Charente at 11.30, the frigates alone could have destroyed the ships on shore. The ebb-tide continued to run until twenty minutes past eight. He also referred to the grounding of most of the line-of-battle ships that had been sent in. p. 51.

When asked what steps he had taken to rejoin Lord Gambier when ordered to do so, he replied : ' His Lordship permitted me to stop, and on the 14th also permitted me to stop, because in fact it was impossible to get out '—a marked admission of the difficulty in getting even a frigate out of Aix Roads in unfavourable weather when once there. When he reconnoitred the Isle d'Aix there were only thirteen guns mounted. p. 54.
p. 41.

Admiral Stopford, the next witness, said that he had ordered the line-of-battle ships out on the morning of the 13th, that the *Caesar* had got aground on ' a continuation of the Boyart shoal or else a separate bank in the direction of that shoal,' that it was nearly dark when she got on shore, that the enemy did not perceive her situation, that only one shot from the batteries went over the ship after she had struck the ground, and that had it been daylight he should have despaired of getting her off. The pilot had told him that there was sufficient water. Admiral Stopford mentioned that he had commanded a squadron in Basque Roads for a considerable time. He said :

The dislodgement from their anchorage of the enemy's ships by fire-ships removed but a very small part of obstacles which ever existed in my mind, and in those of other officers who have commanded before me towards the British fleet going in to attack them ; the difficulties of the navigation, and our imperfect acquaintance with it, with the wind right in would, I think, have made me unworthy of command, if I had risked a fleet or a

' Trial of
Lord Gam-
bier,' p. 73.
Admiral
Stopford's
evidence.

squadron entrusted to my charge in a situation where ours would have the only loss and the enemy's all the advantage.

Lord Gambier's defence occupies thirty-four pages. I give some extracts from his defence :

' Trial of
Lord Gam-
bier,' p.106.

I have now the satisfaction, that out of all the officers of the fleet who are summoned on this trial, the charge rests upon the unsupported, I may say already refuted, testimony of the Captain of the *Impérieuse*. . . .

p. 109.

After making his undefined accusation against his Admiral, he excuses himself from explanation by a general reference to the log and signal books of the fleet, without knowing if I may judge from the imperfect state of his own log, what that general reference might produce. . . .

p. 109.

Although a considerable degree of disappointment was manifested throughout the fleet, on his arrival to conduct the service to be performed by fire-vessels, yet every officer in the fleet rendered him the most ready assistance, not only in valuable suggestions (the entire credit of which seems to have been assumed by his Lordship), but by every other means that zeal and courage could afford.

Lord Cochrane on presenting himself to me after the action, was general in complaint of the officers who commanded the other ships, engaged at the same time as himself on the attack of the enemy ; but having equal means with his Lordship, of judging of the conduct of those officers, I do aver that it was highly meritorious.

p. 110.

At the time Lord Cochrane made this general complaint I had not the smallest suspicion that there existed in his mind those sentiments of *disapprobation of my conduct*, which by his proceedings since his return home, I am to suppose he then entertained. It would in such a case have been liberal, and I think also his duty, to have made a communication to me to that effect. I should then have been enabled to have guarded, in some measure, against his attack upon my character, on his arrival in England. . . .

pp. 113-24.

Lord Gambier had taken precautions to deal with any attack that the enemy might make on his fleet with fire-ships, or with any attempt the enemy might make to escape from Basque Roads, and he had sent the master of the fleet and the master of the *Caledonia* to survey the channel, as a prepara-

tion for the intended attack on the enemy's ships. He ordered eight of the largest transports then with the fleet to be prepared as fire-ships by means of some resin and tar recently captured in *chasse-marées* and other combustible materials supplied by the fleet. On the 10th of April twelve fire-ships arrived from England. He said that the night was extremely dark—it blew a strong gale with a high sea; from these and other untoward circumstances several of the fire-ships failed in their object but he 'could not discover (after the fullest investigation), that blame was imputable to any of the officers who commanded them.'

' Trial of
Lord Gam-
bier,' p.
124.

The explosion vessels, conducted by Lord Cochrane in person, also failed in their object, as will be seen by reference to the small chart I now deliver into court, which points out where two of them blew up; the third broke adrift and did not explode. p. 124.

He gave as a reason for not attacking sooner that, with the wind blowing directly in, a damaged ship could not come out again unless she had the ebb-tide to bring her out, and that had the wind been favourable for both sailing in and out, or even the latter only, there could be no doubt that the sooner the enemy's ships were attacked the better. p. 127.

He said that the bomb vessel *Etna* passed the *Impérieuse* whilst at anchor about one, and began the attack some time before the *Impérieuse* arrived up; half an hour afterwards the *Impérieuse* and *Beagle* followed the *Etna* and gun-brigs into the attack; and between ten minutes before and seven minutes after two, as will be seen by a reference to the logbooks on the table, he ordered the *Indefatigable*, *Unicorn*, *Emerald*, and *Aigle* frigates with the *Valiant* and *Revenge* to weigh, Captain Bligh the senior officer having some hours before received his directions for his proceeding against the enemy. p. 127.

During the night of the 13th he sent in the *Caesar* with Admiral Stopford, and the *Theseus*, 74's, together with the boats of the fleet, and he also sent Mr. Congreve with his rockets. On the 13th and 14th Lord Cochrane remained p. 129.

in Aix Roads, but nothing was attempted by the frigates, though the *Etna* threw shells and the *Whiting* threw rockets.

Lord Gambier said :

‘ Trial of
Lord Gam-
bier,’ pp.
131-2.

I have next to refer to the evidence of the log and signal books of the fleet, on which the charge purports to be founded, and I must here beg to call your attention to the very unusual circumstance of there being already on your table, two logbooks of the same ship (namely the *Impérieuse*) and materially differing from each other ; one of them produced by the master of the *Impérieuse*, as the authentic public document of that ship, to the accuracy of which he has deposed ; and the other presented by Lord Cochrane, and admitted by his Lordship to be a compilation by himself in London, from materials that are not produced to the Court.

In addition to these circumstances, I have to lay on your table a third paper, purporting to be also a log-book of the *Impérieuse*, but differing from the two already before you ; this paper was delivered to me by Lord Cochrane, in obedience to my order of the 12th May last, to furnish me ‘ with a copy of the books of logs and signals of his Majesty’s ship *Impérieuse* under his command, from the 11th to the 15th April inclusive,’ and, to this log the Court will find affixed his Lordship’s signature.

The Court having so attentively inspected the master’s log, I need not point out the alterations evidently made therein : it cannot fail to observe the variations made in the two logs.’

p. 153.

Lord Gambier further stated that he had inserted that the *Calcutta* had struck to the *Impérieuse* in his despatch on the authority of Lord Cochrane, and that he wished to have that point cleared in justice to the officers of the fleet.

p. 155.

Mr. Fairfax said that after the *Aigle*, *Unicorn*, and *Valiant* had opened fire on the *Calcutta* he saw a shot from that ship strike a boat astern of the *Impérieuse*.

Captain Bligh said that after three the *Valiant* opened fire on the *Calcutta*, and that shortly afterwards he saw her crew abandon her, leaving her colours flying. The *Valiant* then fired at the *Aquilon*, *Ville de Varsovie*, and *Tonnerre* as soon as she could get her broadside to bear on them. As

the tide fell the *Revenge* grounded, but was soon got off and went between the Boyart and the Palles shoals. The frigates all followed her except the *Impérieuse*, who grounded about six o'clock that evening. In moving the *Valiant* she grounded on a knowl, and remained until eleven at night; at low water there was 17 feet alongside of her.¹

Four fire-ships were prepared by the Commander-in-Chief and were sent in afterwards, two of them were to have gone against the *Foudroyant* under the direction of Captain Seymour, and two against the *Océan*, but as the wind was not favourable he judged the attempt to be impracticable. At half-past three A.M., the water being up to the orlop decks of the *Aquilon* and *Ville de Varsovie*, he ordered them to be set on fire. The *Valiant* was in a very perilous situation when on shore, nothing but the wind shifting and blowing directly out could have saved her from being wrecked.

Captain Bligh also stated that the *Revenge* took up a position within the *Impérieuse*, and that she appeared to draw the fire of the batteries on Isle d'Aix from the frigates to her. When at anchor in the road of Aix, he had counted fifty guns in the batteries of that island. There may have been more, he was certain that there were not less.² Lord Cochrane had told him that he calculated on losing three or four ships-of-the-line, if the Admiral had sent the squadron in. The *Calcutta* never struck her colours. An officer in the *Beagle's* boat reported to him that he had taken possession of the *Calcutta*, and that there was nobody on board.

Mr. Stokes, who was on board the *Impérieuse* during part of the action on the 12th, said that the *Revenge* was the nearest ship to the enemy.

Captain Poo Beresford said that the *Theseus*, 74, weighed at about 5 P.M. on the 12th and went into Aix Roads. When he went on board the *Impérieuse*, he found her on shore. He told Lord Cochrane that he had just left the *Caesar*, which was on shore also in a critical situation within the

¹ She must have been drawing at least 23 feet.—ED.

² From this I gather that a number of these guns were masked when the island was previously reconnoitred by frigates.—ED.

' Trial of
Lord Gam-
bier,' p.
155.

p. 160.

p. 161.

p. 163.

range of shot and shell ; that, in his opinion, ships-of-the-line had no business there. He also said that

' Trial of
Lord Gambier,' p.
163.

Lord Gambier seemed to be most anxious to act with his fleet, but that if he had sent them in there, it clearly appeared that few would have returned, if any, were I think my expressions and that it would have been madness to have done it. His Lordship [that is, Lord Cochrane] said that three sail-of-the-line might have been lost, which in his opinion did not signify. My reply was, that even one sail-of-the-line being lost would have been a disgrace to the enterprise and to England. This passed in the presence of Captains Bligh, Wooldridge, and Maitland, Colonel Cochrane [his brother], and there were several others round us at the time, whose names I do not recollect.

Lord Cochrane also told him that it was a thousand pities that the *Calcutta* had not been brought off, that he had sent a young cur on board to use his own discretion, and that the boy had set fire to her.

p. 167.

Captain Kerr of the *Revenge* said that his ship's shot just reached the *Tonnerre*, that the three ships that were on shore upon the Palles, and that got away, were never at any time in a position to be attacked by us as they were farther off. When the *Revenge* quitted her situation her keel was in the mud. Any ship, however short a distance ahead, must have grounded and been lost, as she was immediately under the fire of the enemy's batteries.

p. 172.

Captain Godfrey, of the *Etna* bomb, said that, in company with the *Conflict*, *Insolent*, and another brig, he passed the *Impérieuse* on the 12th nearly half an hour before she weighed. He threw shells until his 13-inch mortar split and his 10-inch shells were expended.

p. 177.

Mr. Fairfax said that the explosion vessel blew up about two cables, that is about 400 yards, from the *Lyra*, and about a mile from the enemy, and that the fire-ships all appeared to steer to the point where the explosion had taken place. Immediately after the explosion he hailed the boats from the explosion vessel and demanded the countersign ; they replied, and said they were from the *Impérieuse*. The *Lyra* was a mile and a quarter from

the enemy's line-of-battle ships. Lieutenant Bissel and Lord Cochrane were on board the *Lyra* next day, and he asked the former why the explosion vessel was set fire to so close to the *Lyra*. Lieutenant Bissel replied, 'The fuzees burnt only six minutes and a half instead of twenty.' Mr. Fairfax then said, 'You had like to have blown me up and not the enemy.'

'Trial of
Lord
Gambier,'
p. 178.

Mr. Wilkinson said that on April 14 he was present when Lord Cochrane told the Admiral 'that if he had sent in the ships agreeably with his signal, he calculated or reckoned upon three or four of them being lost, or words to that effect. This alludes to the signal of the 12th. 'Seven of the enemy's ships on shore—half the fleet can destroy them.'

p. 179.

He said nothing of Lord Gambier's conduct in his presence, but he spoke of the misconduct of the sloops, small vessels, and of a great many of the fire-ships.

Sir Harry Neale said that on April 6 Lord Cochrane had told him that the fleet was nine miles from the French fleet; he replied that they were only six, the distance had been ascertained by angles as well as cross-bearings, and Lord Cochrane said that the chart was not to be depended on.

p. 186.

Captain G. F. Seymour of the *Pallas* said that there was water for the line-of-battle ships to have floated in at eleven on the morning of the 12th, but that he doubted whether they would have been successful or unsuccessful.

p. 194.

Captain Wolfe of the *Aigle* said no fire-ship was set fire to before the explosion vessel blew up, that five behaved very well—he especially mentioned Captain Newcomb and Lieutenant Cookesley. His own ship was nearly burnt by two of them that were on fire before they passed her. The only one that was badly managed that he particularly noticed was one that went between the *Aigle* and the Isle of Oléron.

Captain Kerr of the *Revenge* gave evidence about the damage done by the batteries of Isle d'Aix. Part of the mischief done to his running rigging was from the fire of the *Aquilon* and *Ville de Varsovie*. Lord Cochrane had

p. 209.

never sent to inform him of a safe anchorage to the southward.

Captain Pulteney Malcolm said that had there been a reserve of fire-ships he thought that some of them might have been destroyed on the morning of the 12th. When the bomb and brigs were sent in on the 12th the *Impérieuse* and *Beagle* very soon followed. He thought that the large ships might have been sent in half an hour sooner, after the two French line-of-battle ships that had remained afloat had been moved.

He thought that ships on no account could with propriety have been sent in to attack the enemy till, at least, half flood which was about noon; that sending them in afterwards while the enemy remained on the defensive would have been attended with considerable risk, because had they been disabled with the wind as it was they could not have come out but must have gone to the mouth of the passage between the Palles and the Boyart, which was ill understood but where I had believed there was anchorage for a few large ships.

‘Trial of
Lord
Gambier,’
pp. 218–24.

Captain Broughton of the *Illustrious* said that he was on board the *Amelia* when she went in to dislodge the enemy from the Boyart shoal, that there were between fourteen and twenty guns on a semicircular battery on Isle d’Aix which commanded the roadstead, and another battery which contained six or nine guns which also bore on the anchorage and its entrance. The rubbish heaps that he saw were caused by the enemy repairing and improving the old works. There were plenty of other guns besides those he mentioned. He thought that ships might have been sent in at about eleven o’clock on the morning of the 12th.¹ When Captain Broughton gave this evidence, he believed in the existence of a safe and accessible anchorage in Les Grandes Trousses, on the other side of the Boyart and Palles shoal.

p. 223.

When Captain Broughton was asked whether, if he had commanded the squadron, he would have taken it in to attack the enemy at their anchorage, he replied, ‘Most

¹ This evidence and that of Captain Malcolm is the only evidence that I can find which supports Lord Cochrane’s contentions.—ED.

certainly not.' I mention this because Admiral Harvey had said, when out of temper with Lord Gambier, 'that had Lord Nelson been there he would not have anchored in Basque Roads at all, but have dashed at the enemy at once.'

'Autobiography,' i. 357.

Captain Kerr of the *Revenge* said that if two line-of-battle ships had been ordered to advance within two or three cable-lengths from the batteries of the Isle d'Aix they would have been completely dismasted and have suffered a heavy loss in men; and that if dismasted they would probably have been lost by drifting up the Charente, if the wind had been from the northward as it was on April 12. I have mentioned in another place the damage done to, and the losses sustained by, the *Revenge* from the distant fire of those batteries.

'Trial of Lord Gambier,' p. 225.

Lord Cochrane asked to be called again to give evidence about the conduct of the officers in the fire-ships and other vessels. He wished to lay before the Court the orders given to the fire-ships for their guidance, as it would tend to clear some of them from blame. As this had nothing to do with Lord Gambier's conduct, the Court declined to enter into it.

p. 229.

At the close of the trial Lord Gambier said :

Some positions laid down by two of these witnesses have been so completely refuted by other evidence brought forward, that I feel myself more and more confirmed in my opinion, that the measures pursued for the attack of the enemy were those best calculated for the object in view.

The Court decided that Lord Gambier's conduct was marked by zeal, judgment, and ability, and adjudged him to be most honourably acquitted.

To the best of my knowledge no new evidence has been brought forward since this trial, except that a later chart of 1829 is more in agreement with the *Armide* chart than the one published by Lord Cochrane. I do not think that a later chart than that of 1829 would add to our knowledge on the subject, as shoals in estuaries are perpetually changing their position. Moreover, I do not look upon the assertions contained in the 'Autobiography' as evidence.

'Memorials of Lord Gambier,' ii. 174.

The 'Mariner of England,' published in 1908, which is an account of the life of William Richardson, gunner of the *Cæsar*, contains an interesting and independent account of these operations.

He says that 'The *Mediator* carried away the boom laid across by the enemy, and the other fire-ships followed her in,' and mentions that the captain of the *Cæsar* had to leave her to attend as a witness at a 'Court-martial going to be held on Lord Gambier at the instigation of Lord Cochrane for something that had displeased the latter about the Basques Roads business.'

PART II

THE STOCK EXCHANGE FRAUD OF 1814

CHAPTER I

POLITICS AND FINANCE

DURING the court-martial on Lord Gambier (July 1809) Captain Duncan, a son of Admiral Lord Camperdown, had been appointed to the *Impérieuse* as acting captain. The 'Autobiography' tells us that Lord Cochrane had requested that he should be the officer selected for that purpose. In 1810 the Admiralty asked to be distinctly informed 'whether or not it is your Lordship's intention to join your ship the *Impérieuse*.' The 'Autobiography' says that he was determined that Mr. Yorke, then First Lord of the Admiralty, should neither get an affirmative nor a negative from him as to joining the frigate. Eventually on June 14, 1810, he wrote to say that he was unable to join her in the time specified.

His real reasons for refusing to do so were no doubt partly those given in his speech on March 24, 1812, and the fact that since peace had been made with Spain there were fewer chances of obtaining prize-money. His cruise in the *Pallas* had made him independent of the service.

So he busied himself with politics. He appears to have taken great pleasure in addressing crowds in Palace Yard, near the entrance to the House of Commons. The practice of hooting or cheering Members of Parliament on their way to the House was for many years an important feature of

Westminster politics, and this form of picketing greatly increased the importance of that borough.

Tiring of politics, and finding his importance decreasing in the House of Commons, he became a plunger on the Stock Exchange, in conjunction with his uncle (the Hon. Cochrane Johnstone) and Mr. Butt.

The Hon. Andrew Cochrane Johnstone, though an uncle of Lord Cochrane's, was only about eight years older. He had taken the name of Johnstone on his marriage with a lady of that name, the daughter of a distinguished naval officer. He had been in the Army, and was at one time Governor of Dominica. While in that situation he showed nerve, courage, and resource, when dealing with a mutiny of negro troops. He appears to have left the service in 1803. He is described as a 'smuggler' and as a 'daring adventurer' by Lord Brougham.

'Life and Times of Lord Brougham,' pp. 442 and 507.

He had been engaged in some business connected with the Walcheren expedition in 1809, and was behind the lines of Torres Vedras in 1810 when Massena was facing Wellington. I think it possible that his smuggling may merely have consisted in his getting British goods through to the Continent, a perfectly legitimate operation in war time.

In 1814 he was heavily in debt, but being member for Grampound, a purchasable borough, he could not be arrested.

After his trial in 1814 for participation in the Stock Exchange fraud, he fled the country and does not appear to have returned. Had he done so, after serving whatever sentence might have been passed upon him, he might have been imprisoned for debt. 'Les absens ont toujours tort.' Lord Cochrane and Mr. Butt, both of whom remained in England, endeavoured to make a scapegoat of him. Their supporters have worked 'the wicked uncle' theory for all that it was worth, to a greater extent I think than is warranted by the actual circumstances. In 1814 Lord Cochrane was no child, no 'Babe in the Wood' to be led about by a wicked uncle.

Lord Cochrane's extraordinary account of his own ac-

quaintance with Mr. Butt is as follows, and is derived chiefly from the 'Review of the Case of Lord Cochrane,' which was presented to King William the Fourth in 1830 by Lord Cochrane, then Lord Dundonald. Mr. Butt had purchased the situation of Pay Clerk at Portsmouth Dockyard, and in 1812 he had complained to Lord Cochrane that his emoluments had been reduced. Mr. Butt also wished Lord Cochrane to bring a case of a false muster at Portsmouth before the House of Commons, which he declined to do. The Review says that Lord Cochrane 'conceived a favourable opinion of his character and motives which he still retains.'

Mr. Butt wished Lord Cochrane to speculate on the Stock Exchange, which he at first refused to do. But in October he brought to Lord Cochrane £430, which he said was the profit of a speculation he had taken the liberty to make on his lordship's account; which proceeding Lord Cochrane then considered, and still considers, a disinterested though, as it turned out, an unfortunate act of friendship on the part of Mr. Butt. From this beginning Lord Cochrane, chiefly through the medium of Mr. Butt, who always acted gratuitously, though occasionally through directions which he himself gave to Mr. Butt, continued to speculate in Funds—and upon the whole Lord Cochrane realised by these speculations between October 22, 1813, and February 10, 1814, the sum of £4,781 17s. 6d. Mr. Butt did not make the acquaintance of Mr. Cochrane Johnstone until January 20, 1814. From that time Mr. Johnstone cultivated the acquaintance of Mr. Butt, who introduced him to his broker, Mr. Fearn.

'Review of the Case of Lord Cochrane, pp. 81-2, printed in 1830.

p. 82.

Lord Cochrane and his uncle were also on friendly terms with the adjutant of Lord Yarmouth's regiment, Charles Random de Berenger, a man of Prussian origin, who claimed to be descendant of those Lombard kings whose dynasty was put an end to by Charlemagne in the year 772. He appears to have been the inventor of a system of shooting, to have been in fact a prototype of what we should now call a musketry instructor. The American ships stationed backwoods' men in their tops to fire down on to the decks

of their enemies, and it was thought desirable to man the tops of our ships with specially trained men. He was a man of varied knowledge, and claimed to have invented a new form of destructive explosive.

The idea of his going on board the *Tonnant* to instruct the men in sharpshooting, and possibly to assist Lord Cochrane in his laboratory work, had been mooted, but nothing definite had been decided upon. De Berenger was heavily in debt, and resided in consequence within the rules of the King's Bench, a sort of modified imprisonment that has since been abolished. His social position, however, does not appear to have been affected by his pecuniary difficulties. He was a frequent visitor at the houses of Admiral Sir Alexander Cochrane and of the Hon. Basil Cochrane; and he was on very friendly terms with the Hon. Cochrane Johnstone.

Lord Cochrane has admitted that he had met him on social occasions at the houses of both his uncles.¹

¹ See pp. 59 and 65, Lord Cochrane's *Letter to Lord Ellenborough*.

CHAPTER II

CONSPIRACY TO RIG THE MARKETS

I HAVE already alluded to Lord Cochrane's Stock Exchange speculations in my account of Mr. Butt. During the earlier months of 1814 such speculators had a very exciting time. The destruction of the largest army ever put in the field, during the Russian campaign of 1812, and the crushing defeat of Leipsic in 1813, had freed the greater part of the Continent from invaders, and had enabled the allied armies to approach within striking distance of Paris.

The battle of La Rothière, fought on February 1, 1814, left the French in despair and raised the highest hopes of the Allies. The officers of their armies made up dinner parties for the Palais Royal, Napoleon appeared to be at his last gasp, and an immediate peace appeared certain.

But unfortunately, more from political than from strategical reasons, the Allies separated their forces, and Napoleon again appeared on the field in far different form than he did at La Rothière. To give some backbone to his conscript armies he had withdrawn his seamen from their ships, and most of Suchet's veterans from Spain. The former indeed had been so much in harbour that they had had far more opportunity of learning their drills on the parade-ground than their duties in a gale of wind. Besides, they were grown men, and had been under discipline for some years.

With his armies thus strengthened Napoleon resumed the offensive, won several victories, then to the astonishment of every one drove the scattered forces of Blucher before

him, and forced Schwartzenburg back on Troyes, of which he took possession on February 23. Though still in command of superior forces, Schwartzenburg decided to evacuate that town in preference to risking a pitched battle against Napoleon's victorious troops.

But then Napoleon's good fortune appeared to desert him. His victories had cost him the flower of his army, his enemies were too numerous and too filled with hate and bitter memories of French occupations to accept as crushing any defeat that was not destruction. Eventually numbers prevailed and Paris capitulated on March 30.

At that time a speculator on the Stock Exchange was practically limited to Bank Stock, East India Stock, Consols, 3 per cent. Reduced, 4 per cents., and 5 per cents. There was also a curious investment called Omnium, the composition of which varied from time to time. In February 1814 £1,000 Omnium consisted of £1,100 Three per cent. Reduced and £670 Consols.

Atlay,
pp. 12-13.

This stock was always quoted at a premium varying from day to day . . . and as it was more sensitive than either of its component parts, it was the favourite investment of those who merely made time bargains and whose habit it was to buy vast quantities of stock, which they might dispose of at a profit or a loss, but which they had neither the wish nor the power to purchase outright.

The prices of these stocks were naturally much affected by the news from France. On Monday, February 7, Consols were at $66\frac{1}{2}$; the confirmation of the victory of La Rothière sent them up to $71\frac{3}{8}$ at the end of the week. They were at 72 on the 14th, but on Saturday the 19th they were at $70\frac{1}{4}$, and had been as low as 70 on that day. On Monday the 7th, Omnium had been at $19\frac{1}{8}$. On the 10th, it reached $23\frac{1}{2}$, and on Saturday the 12th, it left off at $28\frac{3}{4}$, but on Thursday the 17th, it was down to 25, and on Saturday the 19th, at $26\frac{3}{4}$ premium.

In January 1814 Lord Cochrane was expecting the command of a 50-gun frigate, the *Newcastle*. He was, however, eventually appointed to the *Tonnant*, a fine 80-gun

ship, then fitting out at Chatham as flagship to his uncle, Admiral Sir Alexander Cochrane, who had already sailed for the North American Station.

At this time, although Lord Cochrane had a place of his own in the country, he does not appear to have had a town residence, for on February 5 we find him writing from his Uncle Basil Cochrane's house in Park Street, Grosvenor Square, to the Secretary of the Admiralty, requesting their lordships to dispense with his joining the ship for ten or twelve days, in order that he might be enabled to arrange affairs of great private importance. The business he said which he had to finish required his undivided attention as it consisted in guardedly drawing up the specification of a patent.

Public
Record
Office, Cap.
c. 80, 1814.

Lord Cochrane was told that he must join at once, but it was added that if he applied again when he had moved the ship down to Long Reach he would be granted leave, if the service permitted of it. He joined on the 8th, took the ship down to Long Reach, applied again for a fortnight's leave, this time successfully. He came up to town on February 14. On February 17 he took a house of his own in Green Street, and on Monday, February 21, Lord Cochrane and Mr. Butt breakfasted together at Mr. Cochrane Johnstone's in Cumberland Place, and then went towards the city in a hackney coach.

On that day, before nine o'clock, rumours reached London of the arrival of an aide-de-camp calling himself Colonel Du Bourg with news of the death and defeat of Napoleon, and when the Stock Exchange opened at ten o'clock

the news from Dover had already begun to work, and though Consols opened at $70\frac{1}{2}$, and Omnium at $26\frac{1}{2}$ for money, as the morning wore on and the tale of the aide-de-camp, and his despatches spread, the market went up by leaps and bounds and Omnium soon stood at a premium of $30\frac{1}{4}$. Atlay, p. 13.

This however was not obtained without a check, when towards twelve o'clock, it was known that no verification of the truth of the news had been received by the Lord Mayor, doubts as to its authenticity began to spread and Omnium began to fall, the

fall however was speedily arrested by the arrival of a striking confirmation of the peace rumours, there came over London Bridge a post chaise and four the horses decorated with laurels, and with three gentlemen dressed as French officers with white cockades in their hats. The cortège passed through the city down Lombard Street, along Cheapside and over Blackfriars Bridge. As they went along the occupants of the chaise scattered little paper billets inscribed with 'Vive le Roi!' 'Vivent les Bourbons!' This seemed to give the stamp of certainty; the downward tendency was checked and Omnium touched 32.

Still there were some hard-headed incredulous people who would not be convinced, and about 1 o'clock messengers were sent to the Government offices; there it was discovered that no confirmation of the reported death of Bonaparte had been received and that the whole affair was a fraud. Then ensued the inevitable fall. Omnium sank gently to 30 and rapidly to 28. Even so it left off one and a half per cent. higher than it had opened. The next morning it was down to $27\frac{1}{8}$ and by the Tuesday afternoon it was back to $26\frac{1}{2}$ its original price before it was disturbed by Colonel Du Bourg.

The sudden rise had given occasion to a vast number of bargains in Omnium; those who had sold on the Monday had been large winners, and those who had bought had lost proportionately. A similar fate had befallen those who dealt in Consols, which had opened on the Monday at $70\frac{1}{2}$ and had risen as high as $71\frac{7}{8}$. On Tuesday morning they were down to 70. The Stockbroker of the Accountant-General of the Court of Chancery, who on the Saturday had bought Consols for the Court at 70, was compelled to purchase on the Monday at $71\frac{5}{8}$ per cent.

The excitement produced by the news of Napoleon's death was not confined to the metropolis. In a letter to the 1st Lord Auckland on March 3, 1814, a correspondent writes that 'the postmaster at Auckland with some well chosen neighbours went to Hartwell House' (the residence of Louis XVIII) as soon as the late stockjobbing fabrication arrived. They were received by the poor King himself, who shook hands with them, invited them to France, filled them with wine, and so on, till they had a foresight of their public entry into Versailles. Their disappointment was as great as the King's.¹

¹ *Journal of Lord Auckland*, iv. p. 408.

Apart from the bare faced nature of the fraud, perpetrated at a time when the extreme tension of men's minds rendered them especially sensitive to the wilful dissemination of false news, there had been heavy pecuniary losses, and if the reports of the day are to be believed these losses had fallen not so much on the ordinary speculator as on the outside public. A curious contemporary work tells us that at that time the great financiers who controlled the stock markets had their own sources of information, better and more expeditious than any Government messenger, and the crafty men of business knew well that the first intimation of such important news as the death of Bonaparte would not have been conveyed by a staff officer [as Du Bourg had represented himself to be] from Dover. A series of preconcerted signals worked from the French coast by means of fishing boats would have flashed the news and specially prepared relays of horses, or perhaps carrier pigeons, would have brought it to London long before any enterprising newsagent. Consequently the experienced hands stood aloof, while the outside public, to whom the story of the staff officer with his scarlet uniform and medal and star carried full conviction, rushed in to their undoing.

No wonder, then, that a chorus of execration against the Stock Exchange and all its works rose high, that the press raved against the 'infamous imposition,' and that *The Times*, in its leading article of Tuesday, February 22, after denouncing the 'fraud of the most infamous and nefarious description,' went on to say :

'Great exertions will no doubt be made by the frequenters of the Stock Exchange to detect the criminal. . . . If his person should be recognised he will probably be willing to save himself from the whipping post by consigning his employers to the pillory, an exaltation which they richly merit, and which if indicted for a conspiracy they will doubtless obtain.

Atlay, p. 15.

'The Bank, the Stock Exchange, etc. : An exposé touching their various mysteries,' p. 89.

CHAPTER III

ACTION OF THE STOCK EXCHANGE

THE Stock Exchange was on its trial, and its authorities lost no time in their endeavour to get at the circumstances attending the fraud and to clear their members from the suspicion of having been parties to it. On the Tuesday morning following the arrival of 'Colonel Du Bourg' at Dover, the Committee of the Stock Exchange met and appointed a sub-committee to enquire into what was now generally described as 'the hoax,' and if possible to bring to justice the principals and agents implicated.

A large number of witnesses were examined before them, and as the first-fruits of the investigations a notice was posted up in the 'House' on March 4 requesting that

all those members of the Stock Exchange who transacted business either directly or indirectly for any of the persons undermentioned on Monday, the 21st February last, would favour the Committee with an 'interview.'

The names given were those of the Hon. Cochrane Johnstone, Mr. R. G. Butt, Lord Cochrane, Mr. Holloway, Mr. Sandom, and Mr. M'Rae, and at the same time a reward of £250 was advertised for the discovery of Colonel Du Bourg.

On March 7 the sub-committee of the Stock Exchange presented a report with evidence attached to it. Although ordered to be printed for the use of Stock Exchange only, it soon found its way into the papers. I now give a few extracts which can be compared with the evidence afterwards given at the trial of Lord Cochrane.

It appears in evidence from the examination of various parties, and is already well known to the public, that a person representing himself to be Colonel R. du Bourgh, Aide-de-Camp to Lord Cathcart came to the Ship Inn at Dover, at about one o'clock, on the morning of the 21st February. He stated that he had just arrived from the coast of France; that he brought the intelligence that Bonaparte had been slain; that the allied Armies were in Paris; and that peace was certain. He immediately ordered a post chaise and four to be got ready; and after having dispatched a letter to Admiral Foley, at Deal, communicating to him the above information, with a view to its being forwarded to government by the telegraph,¹ set off with all expedition to London. This pretended messenger had been traced all the way to town, and it appears, that, about a quarter before nine o'clock, he arrived at Marsh Gate, Lambeth, where he alighted, and got into a hackney coach, in which he was taken to No. 13 Green Street, Grosvenor Square.

A copy of this report is to be found in the Inner Temple Library, and is printed almost verbatim in the Cochrane-Butt pamphlet, 'The Calumnious Aspersions.'

'The Calumnious Aspersions,' p. 4.

The Sub-Committee, for various reasons, unnecessary to allude to, refrain from making any observations on the evidence which they have obtained relative to this subject. They therefore communicate it without a single comment. They remarked, however, that 'on the afternoon of Saturday, February the 19th, the three parties above-mentioned may be considered as having purchased for the next settling days the following sums, viz. :

'The Calumnious Aspersions,' p. 29.

	Omnium.	Consols.
Lord Cochrane . . .	£139,000	none
Hon. A. C. Johnstone . .	410,000	£100,000
Mr. Butt . . .	224,000	168,000
Total . . .	£773,000	£268,000

the whole of which was sold on the morning of Monday, February 21st. It does not appear that any member of the Stock Exchange has been implicated in the knowledge or participation of a measure, which would have, inevitably rendered him liable to expulsion from the House.

They are in possession of still further information on the subject, which it is considered proper not to disclose at present,

¹ The telegraph then in use was a semaphore, and would only work in clear weather.

and which they hope and expect will eventually crown their hopes with complete success.

I have no doubt that the further information alluded to refers to the real name of Du Bourg, as the sub-committee in their second report of January 27, 1815, state not only that they were aware that Du Bourg and De Berenger were the same *five days* before Lord Cochrane mentioned De Berenger's name in his affidavit of March 11, but that *a warrant was already out against De Berenger*. And I also think it more than probable that *Lord Cochrane knew that they knew that Du Bourg was De Berenger* when he made his affidavit, and I shall give my reasons for so doing later on.

These proceedings of the Stock Exchange Committee failed to meet with the approval of Mr. Cobbett. His *Weekly Register* of March 21 says :

Under no wild democracy, under no military despotism, under no hypocritical or cunning oligarchy, under no hellish tyranny upheld by superstition, was there ever committed an act more unjust or more foul than that which has during the last three weeks been committed in the City of London, through the means of the Press against these three gentlemen.

' Remarks
on the case
of Lord
Cochrane,'
p. 17.
Hansard,
xxxii.
p. 987.

A contemporary pamphlet states that 7,000 copies of one of Cobbett's papers were purchased and distributed by the parties implicated in this report. The language of those days appears to have been strong. On the other hand Francis Horner, one of the most justly respected members of the Whig opposition, declared that the public were much obliged to those individuals who had exerted themselves in tracing the Stock Exchange fraud to its source.

In the pamphlet above alluded to we are told that—

If any proceeding could claim the merit of singular candour it was this action of the Stock Exchange. It was more than laying open the brief of counsel to his opponent ; it was giving to the party implicated full knowledge of the ' head and front ' of the charge against him ; full time to enquire into the character, connexions, and motives of all the witnesses ; to probe and cross

Atlay, p.
32.

examine them before the time of their appearance in Court ; in short to guard against the effect which could be produced by witnesses procured and stimulated by improper means.

And the importance of this will be appreciated if we remember that in those days accused had no right to the perusal of the depositions taken against them, and that in the events which here followed the True Bill was found without any preliminary enquiry before magistrates.

CHAPTER IV

LORD COCHRANE'S FIRST AFFIDAVIT

THIS report of the sub-committee could not well be left unnoticed, and it became necessary for Lord Cochrane to take steps to vindicate his character. He had ignored the clamour and the newspaper articles on the subject and had rejoined the *Tonnant* at Chatham on the 28th of February 1814, it was now clearly necessary that he should return to town. On the application of a near relative the Admiralty granted him leave, and Lord Melville, who was First Lord, wrote a letter to him which he declared to be still unopened on July 5. He has also stated that he had applied to Admiral Surridge for leave previous to the receipt of leave from the Admiralty. But he has brought no evidence to support these assertions, and it appears a very peculiar proceeding on the part of a captain of a line-of-battle ship to leave unopened a letter from a First Lord of the Admiralty in war time. He evidently wished it to be believed that he left Chatham for London on his own accord, and not because Lord Melville had told him to do so.

See Mr.
Croker's
letter of
March 22,
1814.
Hansard,
xxxiii. p.
550.

In the meantime De Berenger (the *soi-disant* Du Bourg) had been provided with a quantity of one-pound notes, part of the proceeds of a cheque for £479 odd drawn by Lord Cochrane. He had left London on Sunday the 27th, and there was every reason to believe that he had reached the Continent in safety, as in consequence of the successes of the Allies, most of its ports were now open to British trade.

There was, however, at least one other man besides Lord

Cochrane who had recognised De Berenger when on his visit to Green Street. He had been seen by a coloured man named Isaac Davis, a former servant of Lord Cochrane's, who afterwards made an affidavit on March 21 in which he stated, 'I knew him having seen him when his lordship lived in Park Street.' It is only in accordance with human nature to suppose that Isaac Davis mentioned this to others before becoming aware that it was desirable that he should remain silent, and that the identity had thus leaked out. Davis was better educated than most coloured men, as he could read.¹

The Third Report of the Stock Exchange shows that Lord Cochrane had renewed his speculations through Fearn after the fraud, but before its discovery, and that he was, therefore, still in touch with the Stock Exchange. All his life Lord Cochrane had valued secret information. If we are to believe the pamphlet he published in 1847, he spent during the French war £2,000 on an intelligence department of his own. I have no doubt he knew very well that the Stock Exchange were quite aware of the identity of Du Bourg when he boldly came forward with his affidavit of March 11.

'Third Report of Stock Exchange.'

If De Berenger had escaped, it would have been almost impossible to have proved him to have been Du Bourg, and Lord Cochrane's declaration in the absence of further proof might possibly have been generally accepted as the correct version. But I cannot see why Lord Cochrane should have troubled himself to make an affidavit. At that time no punishment could be inflicted for perjury in a voluntary affidavit such as he then chose to make.

The proper straightforward course would have been to have gone before the Stock Exchange sub-committee and submitted himself to cross-examination. To protect himself he might, if necessary, have insisted that reporters or friends of his should be present. A letter to the press might perhaps have sufficed.

However, he stated in his affidavit of June 14 that he arrived in London to the best of his belief on March 10.

¹ See *Law Magazine and Law Review*, xi. p. 97.

But from the endorsement on Admiral Surridge's letter it appears that he gave him leave on the 8th or 9th. The *Morning Post* for March 9 says that 'The Stock Exchange Committee have by invitation waited on Lord Melville, and it is understood that a noble lord, whose name has been frequently mentioned in the investigation of this business, was also requested to attend Lord Melville at the same time.' This throws some light on the probable contents of Lord Melville's unopened letter to Lord Cochrane.

Lord Cochrane also tells us in his affidavit of June 14 that, 'conscious of his own innocence . . . he without any communication with any other person, and without any assistance, on the impulse of the moment prepared an affidavit which he swore before Mr. Graham, the magistrate, on March 11.'

The affidavit of March 11 is as follows :—

'Trial,' p.
201.

Having obtained leave of absence to come to town, in consequence of scandalous paragraphs in the public papers and in consequence of having learnt that handbills had been affixed in the streets, in which (I have since seen) it is asserted that a person came to my house at No. 13 Green Street, on the 21st day of February, in open day, and in the dress in which he had committed a fraud, I feel it due to myself to make the following deposition, that the public may know the truth relative to the only person seen by me in military uniform at my house on that day.

COCHRANE.

*March 11, 1814.**

13 Green Street.

I, Sir Thomas Cochrane, commonly called Lord Cochrane, having been appointed by the Lords Commissioners of the Admiralty to active service (at the request, I believe, of Sir Alexander Cochrane) when I had no expectation of being called on, I obtained leave of absence to settle my private affairs previous to quitting this country, and chiefly with a view to lodge a specification to a patent relative to a discovery for increasing the intensity of light. That in pursuance of my daily practice of superintending work that was executing for me, and knowing

that my uncle, Mr. Cochrane Johnstone, went to the city every morning in a coach.

I do swear, on the morning of the 21st of February (which day was impressed on my mind by circumstances which afterwards occurred) I breakfasted with him at his residence in Cumberland Street about half-past eight o'clock, and I was put down by him (and Mr. Butt was in the coach) on Snow Hill, about 10 o'clock; that I had been about three-quarters of an hour at Mr. King's manufactory at No. 1, Cock Lane, when I received a few lines on a small bit of paper, requesting me to come immediately to my house; the name affixed, from being written close from the bottom, I could not read. The servant told me it was from an army officer, and concluding that he might be an officer from Spain, and that some accident¹ had befallen my brother, I hastened back, and I found Captain Berenger, who, in great seeming uneasiness, made many apologies for the freedom he had used, which nothing but the distressed state of his mind, arising from difficulties, could have induced him to do. All his prospects, he said, had failed, and his last hope had vanished of obtaining an appointment in America. He was unpleasantly circumstanced on account of a sum which he could not pay, and if he could, that others would fall upon him for full £8,000. He had no hope of benefiting his creditors in his present situation, or of assisting himself. That if I would take him with me he would immediately go on board and exercise the sharpshooters (which plan Sir Alexander Cochrane, I knew, had approved of). That he had left his lodgings and prepared himself in the best way his means allowed. He had brought the sword with him which had been his father's, and to that, and to Sir Alexander, he would trust for obtaining an honourable appointment.

I felt very uneasy at the distress he was in, and knowing him to be a man of great talent and science, I told him I would do everything in my power to relieve him, but as to his going immediately to the *Tonnant*, with any comfort to himself, it was quite impossible. My cabin was without furniture; I had not even a servant on board. He said he would willingly mess any

¹ In his affidavit sworn in Court on June 14, after the verdict of the Jury, Lord Cochrane varies this slightly: 'When this deponent returned home, he fully expected to have met an officer from abroad with intelligence of his brother who had by letter to this deponent, received on the Friday before communicated his being confined to his bed, and severely afflicted by a dangerous illness, and about whom this deponent was extremely anxious.' ' Trial,' p. 564.

where. I told him that the ward-room was already crowded, and besides, I could not with propriety take him, he being a foreigner without leave from the Admiralty.

He seemed greatly hurt at this, and recalled to my recollection certificates which he had formerly shown me from persons in official situations. Lord Yarmouth, General Jenkinson, and Mr. Reeves, I think, were amongst the number. I recommended him to use his endeavour to get them or any other friends, to exert their influence, for I had none adding that when the *Tonnant* went to Portsmouth I should be happy to receive him. I knew from Sir Alexander Cochrane that he would be pleased if he accomplished that object.

Captain Berenger said that not anticipating any objection on my part from the conversation he had formerly had with me, he had come away with the intention to go on board and make himself useful in his military capacity ; he could not go to Lord Yarmouth, or any other of his friends, in this dress alluding to that which he had on or return to his lodgings where it would excite suspicion (as he was at that time in the rules of the King's Bench), but that if I refused to let him join the ship now he would do so at Portsmouth. Under present circumstances, however, he must use a great liberty, and request the favour of me to lend him a hat to wear instead of his military cap.

I gave him one which was in a back room with some things that had not been packed up, and having tried it on, his uniform appeared under his great coat ; I therefore offered him a black coat that was laying on a chair, and which I did not intend to take with me. He put up his uniform in a towel and shortly afterwards went away in great apparent uneasiness of mind ; and having asked my leave he took the coach I came in and which I had forgotten to discharge in the haste I was in. I do further depose that the above conversation is the substance of all that passed with Capt. Berenger, which, from the circumstances attending it, was strongly impressed upon my mind, that no other person in uniform was seen by me at my house on Monday, the 21st of February, though possibly other officers may have called (as many have done since my appointment) ; of this, however, I cannot speak of my own knowledge, having been almost constantly from home arranging my private affairs.

I have understood that many persons have called under the above circumstances, and have written notes in the parlour

and others have waited there in expectation of seeing me, and then gone away; but I most positively swear that I never saw any person at my house resembling the description and in the dress stated in the printed advertisement of the members of the Stock Exchange. I further aver that I had no concern, directly or indirectly, in the late imposition, and that the above is all that I know relative to any person who came to my house in uniform on the 21st day of February before alluded to.

Captain Berenger wore a grey great coat, a green uniform, and a military cap.

From the manner in which my character has been attempted to be defamed it is indispensably necessary to state that my connection in any way with the funds arose from an impression that in the present favourable aspect of affairs it was only necessary to hold stock in order to become a gainer without prejudice to anybody; that I did so openly, considering it in no degree improper, far less dishonourable; that I had no secret information of any kind, and that had my expectation of the success of affairs been disappointed, I should have been the only sufferer.

Further, I do most solemnly swear that the whole of the Omnium on account, which I possessed on the 21st day of February, 1814, amounted to £139,000., which I bought by Mr. Fearn (I think) on the 12th ultimo at a premium of $28\frac{1}{4}$, that I did not hold on that day any other sum or account in any other stock directly or indirectly, and that I had given orders when it was bought to dispose of it on a rise of 1 per cent., and it was actually sold on an average at $29\frac{1}{2}$ premium, though on the day of the fraud it might have been disposed of at $33\frac{1}{2}$. I further swear that the above is the only stock which I sold of any kind on the 21st day of February, except £2,000. in money which I had occasion for, the profit of which was about £10.

Further, I do solemnly depose that I had no connection or dealing with anyone save the above mentioned, and that I did not at any time, directly or indirectly, by myself, or by any other take or procure any office or apartment for any broker or other person for the transaction of stock affairs.

This affidavit was evidently published with the intention of proving that Du Bourg and De Berenger were not the same, and for the purpose of taking credit for being the

first to publish the name of De Berenger as being the visitor to Green Street.

It is very remarkable that there is no mention of a portmanteau, as later on one of Lord Cochrane's strongest points was that De Berenger had brought one with him, and had put his red uniform away in it, before Lord Cochrane had returned to Green Street.

'Remarks
on the case
of Lord
Cochrane,'
p. 40.

Crane's
evidence
before
Stock Ex-
change.

For Lord
Cochrane's
height, see
'Life of
Lord Dun-
donald,'
published
by eleventh
Earl, i. 56.

De Berenger was about 5 feet 6 inches in height. Lord Cochrane was 6 feet 2 inches. I cannot imagine a more comic appearance than De Berenger in an Obadiah hat, wearing Lord Cochrane's great coat, with a green coat in a towel in one hand, and a portmanteau containing a red uniform in the other, going to Lord Melville to ask for a commission to command sharpshooters. It would have been a scene for a farce. What chance did Lord Cochrane think De Berenger would have had in making such an application while so strangely attired?

Among other things the affidavit states: '*The servant told me it was from an army officer, and concluding he might be an officer from Spain.*'

Now Isaac Davis, a former servant of Lord Cochrane's, afterwards stated in an affidavit published by Lord Cochrane previous to the trial, that he recognised De Berenger on his arrival. Furthermore, Dewman, the servant who fetched Lord Cochrane, said in his evidence at the trial that Davis 'happened to be in the kitchen when the gentleman came.' The chances are a thousand to one that Davis told Dewman who the strange visitor was, and that even if Lord Cochrane could not read the name, or recognise the handwriting of the note that was sent to him, Dewman told him who the officer was, and that he knew very well whom he should meet on his return to Green Street.

'Trial,' p.
350.

Feeling the want of some literary assistance Lord Cochrane now engaged as secretary a man named William Jackson. From the date of their first meeting in March 1814 until 1862 he may, I think, be looked upon as the villain of the piece as far as Lord Cochrane's affairs are concerned. His personal character is admirably depicted by his own evidence and letters, before the Commissioner

sent to examine him by the Lords' Committee for Privileges in 1862. It would be scarcely possible for a man to paint himself in blacker colours. I shall reprint some of his evidence in a later chapter. When his employer died he endeavoured to blackmail his successor by threatening to publish his old friend's letters, and when under examination he denied that he had received money for giving his evidence, until confronted by his own handwriting.

'William Jackson's Evidence before Commissioner sent by Committee of Privileges,' pp. 26-33.

When on oath as a witness in 1862, Lady Dundonald said: 'I always despised the man, and look upon him as the greatest enemy my husband ever had in life, the ruin to his purse and character.—Alas, Lord Cochrane had much more confidence in him than he deserved.'

Much of the so-called 'Autobiography of a Seaman,' and most of the libels on Lord Ellenborough, rest on a William Jackson basis. I may add that Lord Dundonald in his will left £100 to this 'steady friend and former secretary.' p. 4.

William Jackson had been a clerk in Doctors Commons and had written a poem called 'The Rape of the Table; or Ten Honest Lawyers,' referring to Lord Cochrane's proceedings in connection with the Prize Court at Malta. A correspondence began which lasted until 1860. In January 1814 Lord Cochrane wrote to him as follows:

I rather think that I shall accept the command of the *Newcastle*, one of the new 50-gun frigates, as my uncle Sir Alexander Cochrane is desirous I should go with him; I hope however that as the poem you have had the goodness to write on the subject of Lord Gambier's trial ('The Gambyriad') is so nearly finished that I shall be able to carry some of the copies with me to America, where the 'essence of all evidence' has obtained the situation of Master Attendant to Halifax Dockyard. The printer will begin whenever you find it convenient to furnish him with the materials.

This 'essence of all evidence' was Edward Fairfax, who had been Master of the Fleet in Basque Roads. He had given evidence displeasing to Lord Cochrane at the court-martial, and that officer evidently meant to worry his junior in a manner unworthy of a flag-captain.

‘W. Jackson’s Evidence,’ p. 6.

Jackson had applied to Lord Cochrane to take him with him to North America and had gone down to Portsmouth in the hope of meeting him there, but finding that he was stopped by the affair of the fraud had returned to London, where Lord Cochrane engaged him as his private secretary.

I have been unable to ascertain the exact day of the month on which William Jackson commenced his duties, so I do not know how much of the correspondence which took place in March 1814 that I am about to touch on was influenced by him, or whether he had anything to do with the preparations of the five affidavits therein referred to.

CHAPTER V

THE AFFIDAVITS OF LORD COCHRANE'S SERVANTS

ON or about the 14th March the Lords of the Admiralty wrote to Lord Cochrane through their secretary (John Wilson Croker) that they had read the report of the Committee of the Stock Exchange together with his affidavit on the subject of the fraud, and that having taken both into consideration they were of opinion that future explanation was necessary. At the same time it had become imperative to appoint an acting captain to superintend the fitting out of the *Tonnant* and Captain Johnson a former first lieutenant of Lord Cochrane's whom he had previously recommended for this very post in his letter of February the 5th, quoted above, went on board her on the 16th of March.

Atlay, p. 40.
This letter is not preserved but some of its contents are made clear by Cochrane's letters of March 15 and 22.

The Hon. George Eden (second son of Lord Auckland) wrote on the same day to his father, ' Lord Cochrane's defence is not satisfactory, and still less so are those of Cochrane Johnstone and Mr. Butt.'

' Journal of Lord Auckland,' iv. 141.

On the 15th Lord Cochrane wrote to Croker begging that he would move their Lordships to inform him on what points they required elucidation. To this Croker replied on the 17th that :

P.R.O. Cap. o. 142, 1814.

' As the case was become the subject of judicial or other investigation, their Lordships did not think fit to enter into any detailed examination or discussion of the several points which might require to be explained.

On March 22 Lord Cochrane returned to the charge in an angry letter, in which he informed the Lords of the Admiralty through Croker, that he had employed himself in collecting information for the public, which my respect for their Lordships gives me full confidence they will consider. Their Lordships he said had virtually given judgment on *ex parte* evidence, and had superseded him in the command of his ship on no better foundation than declarations retailed from pot-houses and such like places by persons not on oath, which declarations, given in

Ibid. 144.

the absence of the accused, were absurd and contradictory. '*It becomes me, Sir, whatever may be the decision of their Lordships, to neglect nothing that can throw light on this affair.*'

So far as related to himself, at least, he declared that the pretended evidence published by the Committee of the Stock Exchange was a tissue of misrepresentation from one end to the other, and means the most foul and detestable had been resorted to to asperse his character. If the points which required explanation were not yet satisfactorily refuted, and if anything yet remained unsatisfactory to the minds of their Lordships, he begged to repeat his request. that their Lordships would state these points specifically with as little hesitation as they did their opinion generally on the 14th inst., when they were pleased to add their decision that he could not sail in command of his Majesty's ship 'until the final and satisfactory termination of this business.' With this letter Lord Cochrane enclosed the five affidavits mentioned in the next paragraph. Croker acknowledged it on the same day, referring him to the letter of the 17th, to which their Lordships did not think it necessary at present to add anything except on one point, which being unconnected with the transaction of the Stock Exchange they felt themselves at liberty to observe upon :

Your Lordship states that as the case now stands, their Lordships have virtually given judgment on *ex parte* evidence and superseded you in the command of your ship. Now my Lords had hoped that your Lordship would have been sensible that so far from giving judgment and superseding you in the command of the *Tonnant*, my Lords had treated your Lordship with all possible attention and delicacy; your lordship had leave of absence granted to you on the application of a near relative, to enable your Lordship to come, if you should choose to do so, to town for the purpose of taking such measures as you might think proper on the subject of the Stock Exchange Report but as his Majesty's service could not be permitted to stand still on account of your Lordship's absence from the ship, an *acting* captain was appointed to her, and the choice of the officer so to be appointed was left to your lordship.

There were five affidavits enclosed with Lord Cochrane's letter.

If we are to believe the statement made by Messrs. Farrer, Lord Cochrane's solicitors, three of them were prepared in the following manner. One of their clerks was employed by him in Green Street from half-past two until a quarter to six on March 20 'in writing by his Lordship's dictation from minutes or papers that he had before him (but not in the presence of the witnesses), four affidavits to be sworn to by Thomas Dewman, Mary Turpin, Isaac Davis, and Sarah Colton (otherwise Busk), his servants, and afterwards in making copies of the affidavits for his Lordship.' That next day the same clerk accompanied Thomas Dewman, Mary Turpin, and Isaac Davis to the Mansion House and got the affidavits sworn, Davis having previously read over his own affidavit, Thomas Dewman and Mary Turpin having theirs read to them. Sarah on this occasion appears to have avoided making one.

Law Magazine and Law Review,
vol xi.

in ra.
p. 308.

This method of preparing affidavits second-hand is not one likely to conduce to their accuracy, and the statements afterwards made, that Lord Cochrane neglected his own defence, is not in accordance with the employment of a solicitor's clerk from half-past two to a quarter to six.

'Trial,'
p. 347.

Dewman, who had been seventeen years in the Dundonald family, swore that 'the officer who sent me to the city wore a grey regimental coat buttoned up; I saw a green collar underneath it; he had a black silk stock or handkerchief round his neck; he was of middle size and rather of a dark complexion,' and that 'he never saw any person dressed as described by Crane, the hackney coachman.'

At the trial Dewman stated that Isaac Davis 'happened to be in the kitchen when the gentleman came.'

As Isaac Davis knew De Berenger, it is more than probable that he imparted his knowledge to his former fellow servants.

Davis swore De Berenger 'had on a grey great coat, buttoned, and a green collar under it. I knew him having seen him when his Lordship lived in Park Street.'

Mary Turpin swore that 'the said officer had on a great

coat and a sword, and that his under-coat or his great coat had a green collar to it.'

Now it will be noticed that none of these servants swears to the colour of De Berenger's coat, but only to that of the collar. In those days the collars of uniforms were worn much higher than they are now and were much more conspicuous. An examination of contemporary pictures will moreover show that they were, almost without exception, of a different colour to the coat.

Though Thomas Dewman was called as a witness at the trial, Lord Cochrane's counsel never ventured to ask him a single question about De Berenger's costume. Isaac Davis was allowed to leave England with Admiral Fleming in H.M.S. *Eurotas* at the end of April, and Mary Turpin was not called as a witness. Had they been examined they would probably not only have been examined about the clothes De Berenger wore, but about the conversation with him, and concerning him, which took place in Green Street, and also as to the manner their affidavits had been prepared.

One of the other affidavits was to the effect that Messrs. Binns had not sold foreign coins to Lord Cochrane; and the fifth affidavit stated that Lord Cochrane had been at Mr. King's tin manufactory in Cock Lane, Snow Hill, superintending a patent lantern between ten and eleven A.M. on the 21st.

There is also a letter from Messrs. Farrer among the Admiralty records dated April 7. It has an endorsement in Mr. Croker's handwriting, saying that it was not answered because at the time it was received the affair was the subject of legal discussion.

Messrs. Farrer state that Lord Cochrane had consulted them as to what proceedings he ought to take against the Stock Exchange sub-committee, and that under his lordship's direction they had stated a case for the opinion of Mr. Adam and Mr. Gurney.

Messrs. Adam and Gurney dismissed as impracticable any procedure by way of indictment or criminal information. As regards an action for libel they wrote :

The Committee of the Stock Exchange had framed their report with great caution, so as to avoid prosecution or action ; they had abstained from making observations, and had merely referred to what they called depositions, which did not in themselves contain libellous matter, but merely stated certain circumstances, some of which were undoubtedly true, and were admitted by Lord Cochrane.

If therefore he were to commence an action against the members of the Committee for a libel, they would plead the truth of what they stated, and would be entitled to show by evidence or have it inferred from argument, that this publication was not a libel on Lord Cochrane.

Under these circumstances, as well as from the facts of stock-jobbing¹ being admitted, counsel considered the difficulties in proceedings effectually by action to be insuperable, as under the existing circumstances neither adequate damages nor even a verdict could be insured. For these reasons they could not recommend any legal proceeding to Lord Cochrane, and were obliged to view this case as one of that class where injury has been suffered to which no legal redress is applicable, and to recommend it to Lord Cochrane to submit these legal difficulties to his superiors, that they by satisfying themselves of his moral innocence might take such steps as their wisdom might suggest.

¹ Time bargains were then illegal.

CHAPTER VI

THE PAMPHLET CALLED 'CALUMNIOUS ASPERSIONS'

IN the meantime the other conspirators had not been idle. On March 14 the Hon. Cochrane Johnstone wrote to the Stock Exchange Committee stating that the gains made on February 21 had been grossly exaggerated by the public press, and pledging himself to prove that the whole profits were as follows :—

Lord Cochrane	£1,700
Mr. Butt	1,300
Mr. Cochrane Johnstone . .	<u>3,500</u>
Total	£6,500

A week later, on Tuesday, March 22, he solemnly declared his innocence from his place in the House of Commons, and declared that it was his intention to publish a statement which would fully confirm this declaration.

In the meantime the Stock Exchange Committee had come to the conclusion that it would be better not to cancel the bargains made on the day of the fraud, but instead of so doing to take an account of the profits made, and to cause the money to be paid into the hands of independent trustees to await the results of further investigation. It was reported by the Committee that the profits were as follows :—

	£	s.	d.
Lord Cochrane	2,470	0	0
Mr. Butt	3,048	15	0
Mr. Cochrane Johnstone . .	<u>4,931</u>	<u>5</u>	<u>0</u>
	£10,450	0	0

It will be seen that their calculations differed from those of Mr. Cochrane Johnstone.

Mr. Butt brought an action against Mr. Best, one of the trustees, with whom the Stock Exchange had lodged the suspended balances of £10,450, sent out a writ, arrested him, and held him to bail. An attempt was made to terrorise all the members of the Stock Exchange who had made time bargains. A cabinet-maker, Isaac Donithorne, who was afterwards a witness at the trial brought 135 ' *qui tam* ' actions against members of the Stock Exchange to recover penalties under Sir John Barnard's Act passed in 1737.

The *Cambridge Chronicle* of April 22, 1814, says :

The serving of a number of *qui tam* actions considerably interfered with the business of the Stock Exchange. On Friday 160 *qui tam* writs were served on different brokers and speculators for time bargains. On Saturday an attempt was made to serve as many more, and it is said 150 were served.

Between March 26 and April 8 a pamphlet appeared entitled ' The Calumnious Aspersions contained in the Report of the Sub-Committee of the Stock Exchange exposed and refuted, in so far as regards Lord Cochrane, K.B. and M.P., the Hon. Cochrane Johnstone, M.P., and R. G. Butt, Esq., to which are added under the authority of Mr. Butt, copies of the Purchases and Sales of Omnium and Consols, referred to in the Report of the Sub-Committee.'

I date the pamphlet as above because there is mention in it of the discovery of De Berenger's clothes which was published on March 26, and no mention is made in it of De Berenger's arrest which took place on April 8. This pamphlet ran through at least four editions and was published at 2s. 6d.

Though it has generally been called Mr. Butt's pamphlet, Lord Cochrane has admitted, in his ' Letter to Lord Ellenborough ' ¹ (at p. 91) that he had it published.

I think that I can trace the pen of William Jackson in the composition of this pamphlet, which was apparently written to ' convince the most superficial reader of the

p. 15 of
this Coch-
rane-Butt
pamphlet.

¹ See also Mr. Wright's evidence, *Trial*, p. 200.

'W. Jackson's Evidence,'
1862, pp.
19 and 32.

non-identity of the pretended Du Bourg with Captain De Berenger,' and, as we shall see, he told the Commissioner who examined him in 1862 that he wrote the 'Letter to Lord Ellenborough.'

The object of the 'Calumnious Aspersions' was also to try to prove that the purchases made on February 17, 18, and 19 were only part of a large speculative account that had been running all the month, and that the clearance sale on the 21st had been the result of general instructions to sell at a profit.

There are thirteen voluntary affidavits printed in the Appendix. The first, second, and third are those of Dewman, Davis, and Mary Turpin. The fourth is a second affidavit of Mary Turpin's and does not touch on De Berenger's costume. The fifth is the one referring to Messrs. Binns and the foreign coins, and the sixth is that of Mr. King the tinman, to which I have already alluded. The seventh is one by Christmas, saying any appearance of hesitation in answering questions when before the sub-committee of the Stock Exchange was due to his being only seventeen years of age, &c. The eighth was by a Mr. Butler, who only says that he saw Mr. Butt changing some notes on February 19, in presence of some other people. The ninth and tenth are those of William Smith and his wife, who perjured themselves both in their affidavits and at the trial, by saying that De Berenger was in London, when in reality he was at Dover; Smith said at the trial that he drew up this affidavit merely to vindicate his master's character, and not in concert with any one, but at the same time directly he had drawn it up he took it to Cochrane Johnstone to be published. The eleventh and twelfth affidavits only state that there was nothing unusual in Mr. Cochrane Johnstone and Mr. Butt's being in the city as early as ten o'clock, which I can easily believe.

The thirteenth was that of Adams the hackney coachman, who had driven the Cumberland Street breakfast party eastwards on February 21. He swore that

when the carriage got to the bottom of Snow Hill I put down one of the gentlemen who I believe was Lord Cochrane and took the other two to the Royal Exchange.

That Adams was not called at the trial by the defence may be taken as showing that that in all probability his evidence could not have stood cross-examination, and that his affidavit was untruthful.

These thirteen affidavits had already been published in Cobbett's 'Political Register,' and Cobbett had pointed out to his readers the absurdity of supposing that De Berenger and Du Bourg could have been the same.

On March 23 or 24 a waterman named Odell fished up a bundle of clothes while dredging in the Thames off the Old Swan Stairs, and brought it to the Stock Exchange Committee. It contained a scarlet regimental coat cut into small pieces, an embroidered silver star, and the silver badge of an order. These fragments were identified by a Mr. Solomon from whom De Berenger had bought them.

'Trial,' pp. 126-8, and Cochrane-Butt pamphlet, p. 13.

But on April 8 the conspirators received their hardest blow. De Berenger was arrested at Leith. Notes that he had cashed at Sunderland, part of the produce of a cheque of Lord Cochrane's, had put the authorities on his track. He was brought to London on the 12th, and shortly afterwards he found himself securely lodged in Newgate.

His writing-desk was found to contain a quantity of memoranda, a number of one-pound notes, part of the produce of a cheque of Lord Cochrane's, and some napoleons—all of which were seized and detained.

On April 12 Mr. McRae wrote a note to Mr. Cochrane Johnstone saying that the bearer of his note would tell him the terms on which he would lay before the public the names of the real authors of the fraud.

On the same day Mr. Cochrane Johnstone forwarded the McRae note to the Chairman of the Committee of the Stock Exchange, with a letter saying that McRae's price was £10,000, and that he himself was ready to contribute liberally towards that sum. He received no reply, and on April 18 he wrote again to the Chairman saying that Lord Cochrane, Mr. Butt, and himself were willing to subscribe £1,000 each towards the £10,000 demanded by McRae. This communication also remained unanswered. It can only be looked upon as an attempt to draw off attention from the

De Berenger part of the plot, and to concentrate it upon McRae, with whom they were not connected by evidence as direct as that which connected them with De Berenger.

' Trial,' p.
53.

Mr. Butt also wrote to the *Morning Chronicle* saying, 'your astonishment will cease to exist when you see in what manner Captain De Berenger became possessed of the notes in question.'

p. 157.

In the meantime Holloway and Lyte admitted their share in the underplot before the sub-committee of the Stock Exchange, in the hope that they might not be prosecuted. They denied, however, any connection with Lord Cochrane, Cochrane Johnstone, or Mr. Butt.

CHAPTER VII

LORD COCHRANE AND HIS SOLICITORS

ON April 27 an indictment for conspiracy was preferred before the Grand Jury for the City of London, at the Sessions House in the Old Bailey, against De Berenger, Lord Cochrane, Cochrane Johnstone, Butt, Sandom, M'Rae, Holloway, and Lyte. A true bill was found on the same day, and the indictment, as was usual in misdemeanours of importance, was removed at the instance of the prosecutors into the Court of King's Bench.

The date is given as the 20th in the course of the Trial, but reference to the contemporary press shows that it was the 27th.

As this was one of the hardships complained of by Lord Cochrane, it should be pointed out that in the county of Middlesex there were two grand juries : one in the Court of King's Bench, and another at the Sessions for the county, at either of which indictments might be found. Those which were found in the King's Bench were of course tried there ; indictments for felony were obliged to be tried there, but with misdemeanours there was no such necessity, and in a case where there were several defendants it was usual for the prosecution to remove the indictment into the King's Bench.

' Remarks on the case of Lord Cochrane,' p. 19 ; Atlay, p. 53.

So far from this being a disadvantage to the defendants, it was a beneficial proceeding. They were able to appear at the trial by attorney instead of in person ; they were spared the degradation of the dock, and in the event of an adverse verdict, instead of sentence being immediately pronounced there was an interval of some days before judgment was moved for, during which they remained at liberty ; and moreover, they had the right, enjoyed by defendants in no other criminal proceedings, of applying for a new trial.

Speech of the Attorney-General in Hansard, xxviii. 588.

Atlay, pp.
54 and 204.

The indictment seems to have been formally removed on the 29th of April, and on the 7th of May, De Berenger, who was in custody on a further charge under the Alien Acts, and for whom bail was refused, pleaded to it; the others apparently pleaded by attorney without appearing personally. The plea in each case was 'Not guilty.' The next process was the striking of the special jury before the Master of the Crown Office. For this purpose forty-eight names were taken by the Master from the book of merchants produced to him by the Sheriff of London, and in case of suspicion of partiality it was open for either of the parties to apply to the Court of King's Bench for a new nomination. Each party then struck off twelve names, so as to reduce the panel to twenty-four who would be summoned to attend at the trial and be called in their order until the jury of twelve was constituted. At this ceremony at the Crown Office, Mr. Cochrane Johnstone was himself present, and he assisted at the reduction of the jury, nor is there any hint or suggestion that he took any ground of complaint.

After the trial Lord Cochrane indulged in much invective against 'packed' and 'special' juries, which he alleged to be synonymous terms. When it is considered how much of the trial is taken up by complicated sets of figures, it will, I think, be evident how necessary it was for the elucidation of truth that the issues should have been submitted to men of education conversant with business transactions. The list of jurors will be found in its proper place and it contains names still recognised and honoured in the City of London.

The trial was finally fixed for June 8, six weeks after the finding of the bill, and about four months after the commission of the fraud; and it cannot be said that ample time had not been afforded for the preparation of the defence.

Lord Cochrane, however, said in the House of Commons 'that he took no care to prepare his defence being so conscious of his innocence, that he never read his brief, gave any instructions or attended a consultation.' He also said to the electors of Westminster:

I stated in the House of Commons, I gave no instructions to counsel, and attended no consultation. I now see the folly of this negligence: for if I had personally attended to my interests

and conferred with my advocates on the subject, I have no doubt I should have convinced them of my innocence.

That he took no care to prepare his defence is, however, contrary to fact. In writing to the Secretary to the Admiralty on March 22 he said: 'It becomes me, Sir, whatever may be the decision of their Lordships, to neglect nothing that can throw light on this affair.'

But if he gave no instructions to counsel, he at any rate gave written instructions to his solicitors which are to be found in the Appendix to his 'Letter to Lord Ellenborough,' and at p. 430 of the second volume of the 'Autobiography.' They occupy a page and a half of print.

The February number of the *Law Magazine* for 1861 contained an article on Lord Cochrane's Trial and on the 'Autobiography of a Seaman.' The writer accepted as true most of the statements contained in the latter work, and therefore came to the conclusion not only that Lord Cochrane was innocent, but that his conviction had been due to the carelessness and incompetence of his solicitors, the Messrs. Farrer.

But Messrs. Farrer did not sit still under this accusation. They brought direct evidence consisting of letters from Lord Cochrane, his bill of costs, and notes taken at the time, to prove to the reviewer that his charges were baseless, and they were retracted accordingly. In the next number of the magazine they showed that—

On the 9th of May, there was an attendance upon Lord Cochrane for the purpose of pointing out the evidence which would be required.

On the 10th of May, the whole morning occupied on the evidence with Lord Cochrane.

On the 12th of May, the servants' evidence was read over to Lord Cochrane, when he made an alteration in that of one of them.

On the 23rd of May, the rest of the examinations were read over to him.

On the 7th of June, the evidence was again read through with Lord Cochrane, who was informed that counsel was of opinion that no witnesses should be called. And the same

day arrived a letter from him, desiring that Mary Turpin's statement that De Berenger's coat was *red* should be expunged from the brief. And during the progress of the trial on the 8th and 9th of June, he also wrote on the subject.

This is corroborated by the following statement contained in a note at p. 456 of the second volume of the 'Autobiography.'

From an item in my solicitor's bill dated June 6, only two days before the trial, I extract the following—'Attending a consultation at Mr. Sergeant Best's chambers, when your case was fully considered, and all the counsel were decidedly of opinion that you must be defended jointly with the other defendants; and the counsel recommended your servants being in attendance on the trial, although they remained of opinion that neither they nor any other witness should be examined on your part.' In a subsequent item, dated June 7th, I am represented to have acquiesced; not however in the non-examination of my witness but in the joint defence.

'Life and
Times of
Lord
Brougham,'
ii. 238.

Brougham, who was one of the counsel for the defence, wrote as follows to Lord Grey on July 21, a month after the trial :—

Italics in
the original.

They begin now to throw the blame on George Ponsonby and Whitbread, who without having seen the evidence, and ignorant of the whole subject had the incredible folly to blame the counsel for not calling the witnesses. The history of presumption offers no greater instance, we had *too* good reasons for not calling them, and were I to-morrow to conduct it, I should after the benefit of their advice still refuse to call any of them and so would all the profession.

I think it quite clear that had the servants been called and cross-examined as to the manner that their affidavits had been prepared, Lord Cochrane might have been indicted for subornation of perjury. His counsel could not allow him to run this risk.

The question of a joint defence was also anxiously considered. To my mind it has always lain in a nutshell. Had he been innocent he would have been defended separately with success, as however he was guilty, he had to be defended

with the others. Their separate defences would have been mutually destructive. They could not shake themselves clear of one another.

Mr. Parkinson of Messrs. Farrer's firm had consultations as follows :—

10th May,—with Mr. Adam who suggested a separate defence.

Vol. xi.
Law
Magazine,
p. 193.

16th May,—with Mr. Scarlett, who hesitated as to which was the better course.

24th May,—with Sergeant Best and Mr. Brougham who recommended a *separate* defence.

26th May,—with Sergeant Best, Mr. Scarlett and Mr. Brougham, when all advised a joint defence.

27th May,—with Sergeant Topping who concurred in the last recommendation.

1st June,—with Sergeant Best who on reconsideration was still of opinion that a joint defence was preferable.

6th June,—with Sergeant Best, Messrs. Topping, Scarlett and Brougham, when all the learned counsel (it then being two days before the trial, and the last opportunity of altering the ultimate decision) finally advised a joint defence.

Compare
'Autobio-
graphy,' ii.
456 and
infra,
p. 304.

After such evidence as the above as to the anxious consideration of which course it was the best to pursue, all statements of neglect are flagrantly absurd. The above dates and particulars cannot be impeached, because they came from entries made by Mr. Parkinson day by day as the events occurred, and before any notion of Lord Cochrane's attack upon his Solicitors was conceived. Further Lord Cochrane had all these dates and facts stated to him in his Bill of costs and he never challenged them.

Infra,
p. 304.

Those who in future believe that Lord Cochrane and his solicitors neglected his defence in 1814, must also believe that a representative of Messrs. Farrer was capable of defending an attack on his firm by means of a series of forged documents in 1861, a supposition I cannot entertain for a moment.

It is almost incredible that a man of Lord Cochrane's astuteness and acumen should not have realised the gravity of the charge, or the very compromising nature of the evidence already disclosed against him. He was no fresh unsophisticated young sailor suddenly confronted with a set of land sharks. He was

Atlay,
p. 56.

nearly forty years old, he had been spending the last five years on shore, and, indeed comparatively little of his time had been spent afloat; he was a man about town, widely known, and with an enormous circle of acquaintance ranging from the rough electorate of Westminster to the highest in the land; he was a member of Parliament, a 'plunger' on the Stock Exchange. If deaf and blind himself to the peril in which he stood, had he no one to warn him or to point out the necessity of leaving no precaution untaken?

In the depositions published by the Stock Exchange, connection with the fraud was brought home to him more closely than either to Cochrane Johnstone or Mr. Butt. Satisfactory as the explanation of De Berenger's visit given in his affidavit might appear to himself, it could hardly have that effect universally, and he knew it had not been accepted by the Lords of the Admiralty; subsequent events the finding of the missing uniform and the arrest of De Berenger with the compromising bank notes on him had done nothing to allay suspicion.

Hansard,
xxviii. 560.

One thing, however, we know on his own authority, and that is that he was acquainted with the contents of De Berenger's brief, a copy of which had been shewn him by Cochrane Johnstone, and with the alibi, which it was proposed to set up at the trial in order to prove that De Berenger could not have been the pretended Du Bourg.

• Remarks
on the case
of Lord
Cochrane,
p. 28;
Lord
Cochrane's
own state-
ment,
Hansard,
xxviii. 559,
et seq.

Now considering what that brief was; that it consisted of an alibi, to be sustained by perjury: that Mr. Tahourdin, the attorney for Mr. Cochrane Johnstone was also attorney for De Berenger, that the scene of this alibi was laid at Donnithorne's the upholsterer, and plaintiff in one hundred and thirty five 'quit tam' actions for penalties against members of the Stock Exchange, Lord Cochrane must have had as much credulity as he hopes to find in the rest of mankind, if he did not perceive the gross falsehood and wickedness employed in the fabrication of that brief.

But in point of fact Lord Cochrane and his partisans endeavoured in vain to separate him from his Uncle and De Berenger. The guilt of one is the guilt of all; the defence of one was the defence of all. Had the first scheme of smuggling De Berenger out of the kingdom succeeded, all would have been safe, and the money given to him would have been well employed.

• Remarks
on the case
of Lord
Cochrane,
p. 29.

Du Bourg being unseen, no certainty that De Berenger was the person who travelled from Dover would have been attainable: and then his visit to Lord Cochrane however extraordinary

would only have been suspicious : the silly cavils about a red or a green dress would have had their effect : and in spite of absurdity the idle narrative sworn to by Lord Cochrane would have been believed and rendered current by those who favour all delusions about a [popular] individual. The affidavit is framed almost for the sole purpose of proving De Berenger could not be Du Bourg ; and before De Berenger was apprehended, two of his servants swore to his having slept at his lodging, when he was really at Dover.

As we have already seen, these perjured affidavits were printed in the pamphlet which Lord Cochrane published when he thought that De Berenger had left the country.

'Letter to Lord Ellenborough,' p. 91.

Brougham had written from Lancaster to Lord Grey, on March 12, the day after Lord Cochrane swore to his affidavit :

Of the Cochrane case I know nothing except that I have received general retainers from the respective parties within the last three or four days apparently in contemplation of some proceedings *in a high tone*. Who is implicated I can't say except as I see in the newspapers Yarmouth and Lowther were at first much talked of.

'Life and Times of Lord Brougham,' ii. 198.

The trial came on, as we have said, on the 8th of June a Wednesday. It was held at the Guildhall before Lord Ellenborough, Lord Chief Justice of the King's Bench. The Court sat at nine and was crowded to its utmost limits. De Berenger was there in custody ; whether the other defendants were present does not appear, but we know that Lord Cochrane was absent, and he says that he spent the day looking after his lamp patents.

Atlay, p. 57.

CHAPTER VIII

LORD CHIEF JUSTICE ELLENBOROUGH

OF the presiding judge Mr. Atlay has written as follows :—

Atlay, p. 63.

Edward Law, first Baron Ellenborough, like the vast majority of those who have risen to high judicial office, owed his advancement to his own great abilities and indomitable industry rather than to birth or aristocratic connections. Born in 1750, he was the fourth son of the Bishop of Carlisle, himself the son of a small country clergyman. Educated on the foundation of the Charterhouse, of which school he became captain, he proceeded to Peterhouse, Cambridge, and after an arduous and brilliant career graduated as 3rd Wrangler and Senior Chancellor's medallist, in days long before the institution of the Classical Tripos.

He adopted the profession of the law to which he brought a great natural aptitude, and he preferred to undergo the drudgery of special pleading below the Bar rather than enter incompletely equipped on his career, and consequently it was not till 1780, when nearly thirty that he was called and joined the Northern Circuit. Here his success was rapid. To a sound knowledge of law and especially of the minutiae of pleading and evidence, he united great powers of speech and conduct, and a style of advocacy uncompromising but convincing. For the first seven or eight years, however, he made little headway in London, and it looked as though his would be the fate of so many men at the Bar whose celebrity has been purely local, and who, like Antaeus, have only put forth their full strength when in contact with their native soil.

In 1788, just after Law had obtained the rank of King's Counsel, there came, with the impeachment of Warren Hastings, the grand opportunity of his life. His connection with India was threefold: an elder brother Ewan had for many years

served the East India Company with great distinction, earning for himself the glorious title of 'the just judge,' a sister was married to Sir Thomas Rumbold, and another brother, Thomas Law, was also in the service of the East India Company. Edward Law's great abilities were brought to the notice of the illustrious accused, and hence it was that a comparatively unknown counsel little heard of in London, was chosen to play a leading part in the most famous State trial of our annals, and to measure himself with the most brilliant speakers of the Augustan age of Parliamentary oratory. Fox, Burke, Sheridan, Grey and Windham had been selected by the Commons to conduct the impeachment, and it was in years of perpetual conflict with such adversaries as these that the future Chief Justice gained his reputation. Unequal as the conditions must have appeared, it was not long before his iron inflexibility and unsparing determination began to produce their effect. When once the rhetoric of Burke and Sheridan had lost its glamour, and dry matters of fact and detail and evidence were reached, the trained superiority of the lawyer began to manifest itself.

After a trial of portentous length, Warren Hastings was acquitted, and it was recognised how large a share in his success was due to his advocate.

So far none of his success had been connected with politics. The son of a Whig Bishop of somewhat latitudinarian views, he was looked on coldly by Pitt; and his fierce struggles with Fox and the other Whig leaders during the Hastings impeachment had estranged him from the party to which he belonged by conviction and family association. After the French revolution broke out he had gone with that section of the party which followed Burke and the Duke of Portland, but he took no part in politics, and did not attempt to enter Parliament. When, however, in 1801, Pitt resigned and Addington was called on to form an Administration, he chose Law as his Attorney-General, and the latter accepted without hesitation. During his short tenure of office he rapidly achieved success in the House of Commons, and he discharged the duties of head of the English Bar with the same abilities he had displayed in the conduct of his private practice. His career as a law officer was short; but as we have seen it included a prominent part in the movement for naval reform. In 1802, Lord Kenyon died, and Law succeeded by right as well as by merit to the office he was to hold for sixteen years.

'A Naval
Career in
the Old
War.'
(Markham).

Atlay,
p. 65.

I am not writing a life or a panegyric of Lord Ellenborough, nor have I the presumption to venture on an estimate of him as a lawyer and a judge. This, I think, may safely be said, that he brought to the Bench the same painstaking diligence and the same sturdy independence that he had exhibited at the Bar.

Townsend.
'Twelve
Eminent
Judges,' i.
299.

There have been more learned Chief Justices, there have been Chief Justices before whom it was more pleasant and easy to practise. He had many of the infirmities of a strong character, he was not free from impatience and irritability and he did not suffer fools gladly; but no judge who ever sat upon the Bench surpassed him in his zeal for justice or his detestation of meanness. It has been truly said of him that 'there are none who have worn the ermine with more unsullied purity, or borne the sword of justice with a firmer hand.' It may be added that no one has excelled him in the despatch of business or in the knowledge of the practical work of his Court. He was no respecter of persons, and entirely devoid of sympathy with those who warred against society and religion. But the circumstances of the time demanded a man of unbending strength of character. He had seen the oldest monarchy on the continent go down in ruin because her rulers lacked firmness and courage. An epoch such as that required qualities in a Chief Magistrate which are scarcely necessary in times of peace and order.

State
Trials,
xxix.
1478.

Lord Ellenborough has been accused of political partisanship, as it seems to me, with no justification. That he was a supporter of order, and enforced the law unflinchingly against those who strove to overturn it, can hardly be adduced as an argument. His speeches in the House of Lords give equally little support to this contention. On one occasion, that of the seizure of the Danish Fleet in 1807, he took a strong line against the Government of the day, and his votes in the Melville impeachment were in constant opposition to those of Ministers, but his interference in debate was usually limited to the discussion of Bills affecting the legal profession.

The one act of his career, when—following the precedent of Lord Mansfield in 1757—he entered the Whig Cabinet of 'All the Talents,' formed by Fox in 1806 on the death of Pitt, which is supposed to have stamped him for ever as a politician, is explicable on other grounds. He joined the Government partly out of loyalty to Lord Sidmouth, and partly because in the 'delicate investigation' which the Cabinet was then carrying on with regard to the Princess of Wales there was great need of

another trained lawyer in addition to Erskine. Out of the sixteen years he sat on the Bench he was in the Cabinet just thirteen months, and the majority of his then colleagues were those who for the rest of his official career were in opposition.¹

That he was a member of the Cabinet at the time of Lord Cochrane's trial is merely one of the fairy-tales of the 'Autobiography of a Seaman.' The fairy-tale in question however, and some others, have been frequently repeated by careless writers.

Lord Ellenborough's own reasons for not refusing to join the Cabinet will be found in a letter to William Wilberforce, at p. 125 of the private papers of that distinguished philanthropist. It is too long for me to reproduce, but Mr. Atlay has reprinted the whole of it at p. 358.

In this letter there is an expression of regret that he has had no opportunity 'of explaining more perfectly and unreservedly than I can do by letter all the motives which have induced my reluctant acquiescence in a nomination of myself to a place in the Cabinet.' This undoubtedly refers to the 'Delicate Investigation' into the conduct of the Princess of Wales. There was more at stake in this investigation than the honour of a lady, however exalted her rank might be. No one knew what had actually happened, or to what the investigation might eventually lead. Badly managed at the outset, it might have involved the next generation in a disputed succession, and possibly in a civil war.

Mr. Wilberforce has described this letter as 'a very handsome answer.' I ought to add that this acceptance of a seat in the Cabinet was not accompanied by any increase of emoluments.

Lord Ellenborough was not out of touch with the navy. He had married the daughter of a naval officer, who had been present at the capture of Quebec and had previously done some hand-to-hand fighting, when in H.M.S. *Vulture*. Lord Ellenborough's only brother-in-law, Captain G. H.

¹ Lord Mansfield was in the Cabinet from 1757 to 1765 and Ellenborough was in the Cabinet from February 1806 to March 1807.

Towry was in command of the *Dido* on the 24th of June 1795, when she and the *Lowestoffe* fought the *Artemise* and the *Menerve*, capturing the latter. This action drew warm praise from Nelson.

Laughton's
Life of
Nelson.

The details of the fight are to be found in James's 'Naval History.' That writer says of Captain Towry that 'his conduct was noble in the extreme.' He was senior to Captain Middleton of the *Lowestoffe*, and though in the smaller of the two, he chose the largest of the enemy's ships, and 'did not hesitate a moment in laying the *Dido* alongside a ship of nearly double her force.' Captain Towry afterwards commanded the *Diadem* at the battle of Cape St. Vincent.

James's
'Naval
History,'
ii. 289-91.

CHAPTER IX

THE TRIAL

It is not my intention to deal with the trial at great length. That has been so minutely done by Mr. Atlay, and in such a spirit of thorough impartiality, that there are but few fresh crumbs left to be picked up by future writers, whether they be apologists of Lord Cochrane or not. I only propose to deal with its salient points as connected with such of the accused as did not confess their guilt.

Now Lord Cochrane and Mr. Butt always declared their innocence, but I have not as yet found anyone unconnected with the trial who apparently believed in Mr. Butt's assertions, except Lord Cochrane. The fact is, Mr. Butt remained in England, and an open quarrel would have been fatal to Lord Cochrane. Mr. Cochrane Johnstone left the kingdom, and I have not been able to find that, after the trial, he ever said anything on the subject. I believe that his principal reason for flight was that he was hopelessly in debt and he had no wish to spend the remainder of his life in a debtor's prison, after the expiration of whatever sentence he might expect to have passed upon him. Thus Cochrane Johnstone was made the scapegoat, and Mr. Butt poured out upon him all the vials of his wrath.

In 1860 Lord Brougham gave countenance to the theory that Lord Cochrane had sacrificed himself for the sake of his uncle. Lord Cochrane himself appears, however, never to have publicly adopted the wicked uncle theory, although he allowed others to advance it.

His own theory is that he was convicted in consequence of the unscrupulous villainy of the Government, the prosecutors, the prosecuting counsel, and of the Judge and jury,

'Butt's
Trial for
Libel,' p. 9.

Letter
dated
March 29,
1844,
quoted in
'Autobio-
graphy of
a Seaman,'
ii. 324.
Letter in
Times after
Lord
Dundonald's death.

who were assisted by the crass stupidity and negligence of his solicitors and counsel, especially Serjeant Best, and also by means of perjured witnesses.

The trial commenced at nine o'clock on June 8, 1814, and Mr. Gurney presented the case for the prosecution.

Before describing his speech there are one or two points to which I must call attention. At that time the defence was allowed only one speech, and that before calling their witnesses, and if the defence called no witnesses, the prosecution was not allowed a second speech. It was, therefore, frequently an advantage to the defence not to call any witnesses, so as to prevent the Judge and jury from being influenced by the prosecutor's second speech, which would give him the advantage of the last word.

Atlay.
p. 80.

Until the evidence for the prosecution had closed, no one knew whether witnesses for the defence were to be called or not. I think it is clear that the announcement that they were to be called was a surprise to most of those present.

Another point that I must remark on is that the minds of the jury were already saturated with the details of the case. As city men they had either heard of or seen the accounts that had appeared in the daily papers. They must consequently have known of the Stock Exchange investigation of Lord Cochrane's affidavits and of the pamphlet that he had published containing his servants' affidavits.

Moreover, *Cobbett's Weekly Register* had already devoted several numbers to abuse of the Stock Exchange.

Cochrane Johnstone had taken advantage of his membership to defend himself in more than one debate in the House of Commons. Besides the Cochrane-Butt pamphlet, De Berenger had himself supplied materials for another pamphlet which was printed shortly before the trial, and Lord Cochrane, Cochrane Johnstone, and Mr. Butt had all three written letters to various newspapers.

Gurney began by pointing out that 'to circulate false news, much more to conspire to circulate false news with intent to raise the price of any commodity whatever, is by the Laws of England a crime,' and it had in this case

been aggravated by the defendants having attempted to make 'the officers of the Government the tools and instruments of effectuating their fraud.'

He said he would prove De Berenger to be the main instrument of the fraud, that he appeared at Dover a little after midnight on the morning of February 21.

He announced himself as the bearer of glorious news from the Continent, ordered a post-chaise and four for London, which he offered to pay for with gold napoleons, but the landlord, not liking napoleons, was paid with one-pound notes instead. He gave napoleons to all his post-boys. In consequence of the news other expresses were ordered out, and Mr. Gurney said he believed that some of the expresses reached London half an hour before this person himself. Du Bourg sent the following letter by special messenger to Admiral Foley, the Port Admiral at Deal.

To the Honourable T. Foley,
Port Admiral, Deal, &c., &c., &c.

Dover, one o'clock A.M.
February 21st, 1814.

SIR,—

I have the honour to acquaint you that the L'Aigle from Calais, Pierre Duquin, Master, has this moment landed me near Dover, to proceed to the capital with despatches of the happiest nature. I have pledged my honour that no harm shall come to the crew of the L'Aigle, even with a flag of truce they immediately stood for sea. Should they be taken, I have to entreat you immediately to liberate them. My anxiety will not allow me to say more for your gratification than that the Allies obtained a final victory; that Bonaparte was overtaken by a party of Sacken's Cossacks, who immediately slaid [*sic*] him, and divided his body between them. General Platoff saved Paris from being reduced to ashes. The Allied Sovereigns are there, and the white cockade is universal, and immediate peace is certain. In the utmost haste, I entreat your consideration, and have the honour to be

Sir,

Your most obedient humble servant,

R. DU BOURG,

Lieut.-Colonel and Aide-de-Camp to Lord Cathcart.

Mr. Gurney remarked that the haziness of the morning obstructed the working of the telegraph, and prevented the success of the conspirators from being complete. At Rochester, Dartford, and Bexley the sham colonel repeated his glorious news. Near the Marsh Gate he got into a hackney coach, the only one there, gave the post-boys a napoleon each and drove off.

This was about nine in the morning. The Stock Exchange opened at ten and the funds began to rise. At twelve o'clock, as no letter came from the Secretary of State or the Lord Mayor, people began to doubt the truth of the rumours, prices began to droop, but revived again when a post-chaise and four with French officers, wearing white cockades, drove through the city with horses decorated with laurel. On arriving near Marsh Gate, within one hundred yards of where Du Bourg had alighted, these three gentlemen got out of their chaise, folded up their cocked hats and walked off.

On its being discovered that no messenger had arrived at the office of the Secretary of State, the Funds fell very nearly to their former level.

Mr. Gurney also said

‘Trial,’
p. 2 .

that this part of the plot could have had no effect but for the foundation laid by the appearance of the pretended officer at Dover, and his journey to London, for a post-chaise coming through the City with white cockades and laurel branches, would have had no effect except to excite laughter and derision, but for preparation made by De Berenger in the character of Du Bourg, and when you find for the purpose of producing the same effect, such a coincidence of plan, and such a coincidence of time, the one the basis, and the other the superstructure, although I shall not be able to prove all the parties meeting together, conferring together, consulting together, still it will be impossible to doubt that these are two parts of one whole; that this is, in short, not two conspiracies, but one and the same conspiracy.

Then he proceeded to point out that Lord Cochrane had only moved into his house in Green Street on the

Thursday evening, and that Du Bourg must have been on intimate terms with Lord Cochrane to have known where he resided on the Monday.¹

In describing the speculations of the conspirators, Mr. Gurney remarked: 'Their purchases were the same, their sales were the same,' and these three persons having on the Saturday preceding this Monday a balance amounting in Consols and Omnium to nearly a million, which reduced to Consols amounted to £1,600,000, 'sold all they had, every shilling of it: and by a little accident in the hurry of this great business they sold rather more.'

The sub-committee of the Stock Exchange had discovered that the principal agent of the confederates was 'Fearn a stockbroker, that Mr. Butt was the active manager; that the directions for Lord Cochrane's purchases and sales were made mostly by Mr. Butt, and were recognized by his Lordship. On the morning in question, Mr. Cochrane Johnstone and Mr. Butt had come at an early hour in a hackney coach, and that Lord Cochrane, after having breakfasted in Cumberland Street with Mr. Cochrane Johnstone and Mr. Butt, followed. Lord Cochrane and Mr. Butt travelled in the same hackney coach, at least as far as Snow Hill.'

. . . Mr. Fearn was not the only broker that they made use of; 'they employed a Mr. Smallbone, a Mr. Hichens, and a Mr. Richardson: *they may have employed twenty others that we know not of,*² because it has only been by accident that the Committee learned the employment of Mr. Richardson'; for Mr. Richardson, not being a member of the Stock Exchange, the Committee had no control over him. Mr. Butt had endeavoured to induce Mr. Richardson to purchase one hundred and fifty thousand on the Saturday, but Mr. Richardson trembled at the idea of so large a speculation and only purchased fifty thousand.

' Trial,'
p. 30.

These three persons disburthened themselves of their tremendous balance on the Monday morning 'with a profit of a little more than ten thousand pounds. If the telegraph

¹ He must have known where he resided on the Saturday, the day he left London.

² The italics are mine.

had worked, that [profit] would have been nearer a hundred thousand.'

The sub-committee of the Stock Exchange had private information that Du Bourg was really De Berenger, but, finding he was gone off, they did not refer to the subject.

Cochrane Johnstone had also taken an office for the use of Mr. Fearn in Shorter's Court, Throgmorton Street, just by the side door of the Stock Exchange. This he indignantly denied, and said that the office was Mr. Butt's,

but I am surprised that he should dare to deny it when I have a contradiction not only by a witness but by a letter in his own hand. . . .

Lord Cochrane felt that he must account for his visitor, and he chose to give it under the half and half sanction of a *voluntary* affidavit. I call it so, Gentlemen, for this reason, that although he who makes a voluntary affidavit attests his God to its truth, he renders himself liable to no human tribunal for its falsehood, for no indictment for perjury can be made on a voluntary affidavit. I wish none of these voluntary affidavits were made; I wish that Magistrates would not lend their respectable names to the use, or rather the abuse, which is made of these affidavits: for whether they are employed for a quack medicine or a suspected character, they are, I believe, always used for the purpose of imposition.

Lord Cochrane's affidavit of March 11 (*ante*, p. 64) was then read, and Gurney commented on it.

He then referred to De Berenger's alibi and stated that Lord Cochrane, Mr. Cochrane Johnstone, and Mr. Butt had published two affidavits of a man and a woman of the name of Smith, who were the servants of De Berenger. The affidavits are of the same manufacture with the others (i.e. those of Lord Cochrane and his servants published in the same pamphlet). 'Affidavits are commonly in the third person, "A.B. maketh oath and saith,"' but I observe all these affidavits, as well Lord Cochrane's as the rest, begin I. A. B. do swear.

Mr. Gurney then read the Smith's affidavits, which were to the effect that De Berenger slept at home on Sunday

See Coch-
rane-Butt
pamphlet,
'Calumni-
ous Asper-
sions.'

night, February 20.¹ (This was proved to be perjury at the trial.)

At that time it was supposed that De Berenger was safe out of the kingdom and that no contradiction of these affidavits could ever take place, and Mr. Butt demanded payment of his gains from the Stock Exchange Committee which they had impounded. On April 8, however, De Berenger was arrested at Leith. He was brought to London on the 12th, and was at once identified with Du Bourg; and Solomon, an army accoutrement maker, not only identified him, but identified the clothes which he had sold him, and which had since been dredged up from the Thames. ‘ Trial,’
p. 43.

p. 45.

Gentlemen, what now becomes of these affidavits and those who made them? What becomes of the alibi for Mr. De Berenger? What becomes of the affidavits of his servants, Smith and his wife? What becomes of Lord Cochrane, swearing as he does to his green coat? Why do persons resort to falsehood, but because truth convicts them? . . .

Will they put these persons whom they have made commit this moral perjury into that box and expose them to the charge of legal perjury? If they do not put them there, they ‘die and make no sign,’ and if they do, I think I shall be able to shew you who manufactured these affidavits and how these servants the Smiths, have been dealt with.

Then admitting that Du Bourg and De Berenger were the same, his learned friends might perhaps argue that if criminally connected with Lord Cochrane, De Berenger would not have been such a fool as to have gone to Lord Cochrane’s house, but in all conspiracies there is something omitted and the omission here was this:

In settling their plan of operations, they had forgotten to provide where De Berenger should resort on his arrival in Town, and on his way his heart failed him as to going to his own lodgings; he dared not enter into his own lodgings in a dress, which dress would lead to detection, and he therefore drove to Lord Cochrane’s to

¹ A month later, when news came of the rupture of the negotiations at Chatillon, the premium on Omnium fell from 28 to 12. Had such news come on the 21st instead of the false news, the loss of the three defendants would have been upwards of £160,000. p. 436.

get rid of his dress ; and there he by Lord Cochrane's assistance did get rid of it : he procured a round hat and a black coat, and then went confidently and safely home to his lodgings. . . .

If Mr. De Berenger was the hired agent of these persons for the purpose of committing this fraud, what would you expect ? —why, that after they had used him they would pay him and send him away. I will prove to you, that they so paid him, and that they did send him away.

He would prove that Cochrane Johnstone called on him on February 26, that he left a letter for him, and that De Berenger took his departure on the 27th. He then referred to a memorandum in De Berenger's writing, which I shall deal with in its place when given as evidence.

He next proceeded to trace the origin of the notes found on De Berenger or in his desk. They were derived from a cheque for £479 19s. 4*d.*, payable to Lord Cochrane, and cheques for £56 5s. and £98 2s. 6*d.*, payable to Mr. Butt.¹

Mr. Butt, in a letter to the *Morning Chronicle*, had said : ' Your astonishment will cease to exist when you see in what manner Captain De Berenger became possessed of the notes in question.'

He called on Mr. Butt to show by evidence that those notes came from some other quarter.

Gurney concluded by saying that the prosecutors had ' had no personal difference with any of the defendants ; they had never come into collision with them, to have the smallest possible difference, and they have no wish but justice, and that the verdict would shew the world that as there is no man beneath the law so there is none above it.' ²

¹ In the report of the trial the cheque for £479 19s. 4*d.* is variously dated 10th, 16th, 19th, evidently the result of careless printing or writing ; the 19th, however, is the proper date.—Ed.

² I may here remark that the non-appearance of a clerk named Evans on his subpoena, and the illness (whether real or feigned) of Mr. Wright, the landlord of the Dover Hotel, prevented Mr. Gurney from proving his case as regards the cheque for £56 5s. payable to Mr. Butt. The evidence before the Stock Exchange Committee showed that four one-pound notes paid away to Wright at Dover by Du Bourg had passed twelve hours previously from the hands of Messrs. Bond, the bankers, to those of Mr. Butt. Gurney also made a mistake and confused Lance, who was Smallbone's clerk, with Christmas, who was Mr. Fearn's clerk—a slip which Lord Cochrane's advocate Best took full advantage of.

Mr. Gurney now proceeded to call witnesses. His first business was to prove the identity of Du Bourg with De Berenger, but as that identity is no longer disputed it is unnecessary to go into the details of the evidence given to prove it. It is otherwise as regards the dress worn by De Berenger.

For the purpose of assisting the witnesses, facsimiles of the uniform worn by De Berenger, and the actual clothes themselves in a fragmentary state, were in Court also, with the exception of the cap which had remained in Lord Cochrane's house, Green Street. To facilitate identification, De Berenger was present, he being in custody for a violation of the Alien Act in attempting to leave the kingdom without permission.

See affidavit of the house-keeper; Debates House of Commons; March 5, 18. 'Trial,' pp. 58-84.

Lord Cochrane was not in Court, but whether Mr. Cochrane Johnstone or Mr. Butt was in Court is not clear.

Four witnesses—Marsh, Gourley, Edis, and St. John—gave evidence of De Berenger's arrival at the Ship Inn at Dover, at about 1 A.M. on the morning of February 21. They all recognised De Berenger, and described the uniform that he wore when at Dover as being red or scarlet.

Admiral Foley, who was in command at Dover, proved the receipt of the letter sent by the sham Du Bourg at about three in the morning, which he read in bed and afterwards sent in a private letter to Mr. Croker, Secretary to the Admiralty; he questioned the boy who brought the letter, disbelieved the news, but would have telegraphed to the Admiralty had not the fog been too thick.

Then Mr. Wright of the Crown Inn at Rochester and the post-boys who had driven De Berenger from Dover to Canterbury, Canterbury to Sittingbourne, Sittingbourne to Rochester, Rochester to Dartford, Dartford to London, were called. They had been paid in napoleons. One of them had sold his for a pound-note.

Thomas Shilling, the Dartford post-boy, said that De Berenger told him the good news, and also told him not to hurry his horses, for his business was not so particular now since the telegraph would not work, and not to take any notice of the news as he went along. He asked where

the first hackney coach stand was, and Shilling told him at the Bricklayer's Arms. De Berenger said that would not do for that was too public. Then he asked, was there not one in the Lambeth road. Shilling said yes, but when they arrived at the Three Stags in that road there was no coach there.

'I ordered my fellow servant to stop, and I looked round and told the gentleman there was no hackney coach there; but that there was a coach at the Marsh Gate, if he liked to get in there I dared to say nobody would take any notice of him. There was one coach at the Marsh Gate, and the gentleman stepped out of the chaise into the coach as they were close together. De Berenger pulled up the side-blind while in the chaise.

'He was dressed in a dark fur cap with lace of some sort round it, with a red coat and a star underneath his outer coat, which appeared to be brown.'

'Trial,'
p. 116.
'Autobiography of a
Seaman,'
see note,
vol. ii.
p. 356.

Mr. Richardson cross-examined Shilling with the view of showing that he had received money for giving his evidence. Shilling admitted that 'he had received *five pounds* from the gentlemen of the Stock Exchange towards his expenses. [This has been magnified into £52 by the writer of the 'Autobiography.']

Shilling also stated that he had been examined at the Stock Exchange and before the Grand Jury, nowhere else.

Richard Barwick, a clerk, had seen a post-chaise with *four horses*—'it had galloped at a great rate, the horses were exceedingly hot,' and the man was getting into a hackney coach that the people told me came out of that chaise. He followed the coach as far as the Haymarket, as he wished to know the news; then he gave up the pursuit as he had to go to his work at his office.

William Crane, hackney coachman, gave evidence to the effect that on the morning of February 21 he took a fare out of a Dartmouth post-chaise and four, and put him down at 13 Green Street. He had 'a bit of a portmanteau with him and a sword.' The portmanteau was 'a small leather one big enough to wrap a coat in.' Mr. Adolphus, who examined him for the prosecution, never asked him

'Trial,'
p. 122.

a single question as to his passenger's dress. [If Crane, as is stated in the 'Autobiography,' had been bribed by the prosecution to swear to a red coat, surely the prosecuting counsel would have brought out the colour of the coat in his examination-in-chief.]

[Crane was the only witness at the trial who spoke about De Berenger's bringing this portmanteau to Green Street, which was made the most of by Lord Cochrane later on. Crane in reality was one of Lord Cochrane's best witnesses. The importance of his evidence has been much exaggerated, but as he has been accused of perjury by Lord Cochrane I have reprinted the whole of his evidence in the Appendix.]

A waterman, Odell, deposed to finding the clothes while dredging for coals in the Thames with a drag. He had found it on March 24. The star was in half when picked up. 'Trial,'
p. 125.

Mr. Wade, Secretary of the Stock Exchange, deposed that the star when received by him was in two pieces, but had been sewn together for the purpose of being exhibited. p. 127.

Mr. Solomon gave evidence that he had sold, on February 19, a military great coat, and forage cap made of dark fur with a pale gold band, a scarlet staff coat, the uniform of an aide-de-camp with gold lace, and a star and badge, and the fragments before him appeared to be the same though discoloured by water. He had since had a cap or coat made as exactly like them as he could, which were also in Court. As regards the star, he had the very fellow star. The purchaser took them away in a coach and had a small portmanteau with him. He was told that they were wanted for a person who was to perform in the character of a foreign officer. He could not swear to De Berenger's identity. p. 128.

The Davidsons, with whom De Berenger lodged, then gave their evidence. Mrs. Davidson could not say whether De Berenger had slept in their house on Sunday night or not, but that her husband on Sunday morning called out to her that their lodger had gone out with a new great coat on. A gentleman had come with a letter on February 26 for De Berenger, and when Mrs. Davidson was taken by Mr. Lavie to see Mr. Cochrane Johnstone, who was super- pp. 132-8.

intending the striking of the jury at the Crown Office, she recognised him, although she did not appear to be very positive about him.

'Trial,'
p. 138.

Davidson
Trial,
*Morning
Chronicle
and Times*,
July 22,
1816.

Lancelot Davidson, a broker's clerk, said that he had seen De Berenger at about eleven on Sunday morning wearing a new great coat similar to the one produced in Court, and that he had made a remark about it to his wife. He also said that he did not see anything more of De Berenger until Monday afternoon. Now, it so happens that Davidson was mistaken as regards seeing De Berenger on Sunday morning, as it was proved in 1816 that De Berenger had gone down to Dover on Saturday night, so that it must have been on some other day. The rest of Davidson's evidence remains unshaken. I shall give an account of Davidson's trial in 1816 in its proper place.

Mr. Gurney then brought witnesses to prove the underplot of M'Rae, Sandom, Lyte, and Holloway. As Holloway and Lyte had already confessed, it is unnecessary to go into their evidence in any details, therefore I shall only mention that, as regards this portion of the evidence, Lord Ellenborough pointed out during Mr. Francis Baily's examination that 'the evidence of course can only operate against Holloway and Lyte who were there.'

'Trial,'
pp. 160-74.

The prosecution now proceeded to deal with Stock Exchange transactions. Mr. Joseph Fearn said that he had known Mr. Butt for several years and had been introduced to Cochrane Johnstone and Lord Cochrane by him, and that he was employed by them in February 1814. He had an office in Cornhill, and Mr. Butt had an office in Sweeting's Alley. That he saw Mr. Butt daily from February 12 to 19 at both offices, and that he was frequently in company with Mr. Cochrane Johnstone and Lord Cochrane. That when he did business for Lord Cochrane he sometimes took orders from him and sometimes from Mr. Butt, and that Lord Cochrane always recognised Mr. Butt's orders.

On February 21 he had moved to No. 5 Shorter's Court, close to a side door of the Stock Exchange. Of the three rooms there, he had one and a small closet; Mr. Butt had another upstairs with Mr. Johnstone and Lord Cochrane

and the ground floor was occupied by Mr. Lance, a clerk employed by them. Several friends of his for whom he did business thought the place convenient, so he asked to have the whole of it, which was arranged by Mr. Cochrane Johnstone.

On the morning of February 21 he first saw Mr. Butt and Mr. Cochrane Johnstone at his office at Cornhill at about ten. When asked if he was 'positive whether anyone else was with them,' he answered 'No, I think nobody else.' When the news arrived that Bonaparte was killed, Mr. Cochrane Johnstone and Mr. Butt were with him, but not Lord Cochrane. He then described the effect of the news on the Funds, and he put in some accounts of his sales and purchases.

In cross-examination Serjeant Best said: 'I shall carry back the accounts considerably earlier. If I put in accounts of an earlier date, it must not be considered that I am giving evidence by so doing.' This was assented to, and I have quoted Serjeant Best's remarks verbatim to show that at that time they had not yet decided whether to call witnesses or not, and so give Mr. Gurney the advantage of a reply.

Under cross-examination and re-examination, Mr. Fearn stated that 'Mr. Butt managed principally very much for these gentlemen for Lord Cochrane particularly,' but that Lord Cochrane was not there on the morning of the 21st, and that on several occasions they had not all speculated the same way but on that day they all sold.¹

'Mr. Baily of the Stock Exchange said that their total gains were £10,450 as calculated from the accounts, and the proportion of each was for Lord Cochrane £2,470, Mr. Cochrane Johnstone £4,931 5s., Mr. Butt £3,048 15s.'²

¹ Under Barnard's Act (7 Geo. II. c. 8) time-bargains were illegal. Barnard's Act was repealed by 23 & 24 Vict. c. 28. Some of the Stock Exchange evidence is intricate. Mr. Atlay has reprinted it in full in the Appendix of his book.

² It must be recollected, however, that had Admiral Foley been deceived and the telegraph had been workable, the rise would have been infinitely greater and the profits would have been in proportion. Besides, we have no means of knowing how much they may have speculated with outside brokers.—ED.

Ante, p. 99. Mr. Gurney tried to get Lord Cochrane's affidavit put in as evidence, but Lord Cochrane's counsel would not produce it.

Mr. Wright was called, and deposed that 'Lord Cochrane brought me that affidavit for the purpose of getting it inserted in the newspapers.

Serjeant Best asked him :

' Trial,'
p. 190.

Tell us what he said to you at the time ; did he not at the time when he was giving you directions to print it, say that if De Berenger was the man he had given the Stock Exchange the clue to it ? After reading the affidavit his Lordship said : I once met Captain De Berenger at dinner.

Lord Ellenborough. Was this at the time ?

Lord Cochrane said : I once saw De Berenger at Mr. Basil Cochrane's. I have no reason to think that Captain De Berenger is capable of so base a transaction, but if he is, I have given the gentlemen of the Stock Exchange the best clue to find him out.

p. 200.

Mr. Gurney asked : Look at that (shewing a pamphlet to witness) ; have you received one of those pamphlets either from Mr. Cochrane Johnstone, Lord Cochrane or Mr. Butt ?

A. Lord Cochrane gave me one of those at my own request hearing it was published. [Evidently this was the Cochrane-Butt pamphlet, 'The Calumnious Aspersions.']*¹

Q. Look at that which purports to be an affidavit of Lord Cochrane.

But Serjeant Best interposed as it was not the identical book, and the witness was sent home to fetch his own copy of the pamphlet.

Then Mr. Richardson was recalled, and deposed that he had been employed by Mr. Butt to sell that pamphlet ; but Lord Ellenborough interposed and said, that to be evidence against Lord Cochrane it must be a publication by him. Mr. Gurney said he would wait until Mr. Wright returned, and Lord Ellenborough said to Serjeant Best, 'I leave it to your judgment whether your resistance does you more good than your admission.' Serjeant Best then

p. 201.

¹ At p. 91 in his *Letter to Lord Ellenborough*, Lord Cochrane refers to this pamphlet as criticisms he had published on the Stock Exchange report, thereby admitting his publication of it. It was evidently written by William Jackson. See his evidence in 1862 before Lords' Committee on Privileges.

ceased his opposition and the affidavit of March 11 was read. See *ante*,
p. 64.

Mr. Le Marchant was then called. He held a Colonial appointment at Antigua, a situation which he described as being worth £1,200 a year. He was a friend of De Berenger's, who had told him about his intimacy with the Cochrane's, and that he was to have a certain percentage of the profits made at his suggestion by Lord Cochrane and Mr Cochrane Johnstone. ' Trial,'
pp. 205,
210 and
336.

In the course of his examination-in-chief Serjeant Best interrupted: 'I am aware your Lordship will not consider this as evidence against Lord Cochrane or Mr. Cochrane Johnstone.' Lord Ellenborough: 'No, it is admissible evidence, the effect of it is another thing.'

Le Marchant broke down completely under cross-examination. He had had a correspondence with Lord Cochrane, having asked him for money and been refused, and although this was pretty well proved, as the correspondence had been published in the *Morning Chronicle*, and some of the jury had probably read it, still the correspondence itself could not be read in Court until evidence was called for the defence, so that the letters were not read until the next day. Mr. Gurney probably only called him to prevent the comments that would naturally be made about his absence. p. 207.

pp. 212,
336.

In his summing-up Lord Ellenborough spoke of Le Marchant as follows:

There is a great deal he says which is no evidence against anybody but the person who relates it, viz: Captain De Berenger; and I do not think it at all necessary to state it: he does himself no credit, and he is a person, on the statement of the letters which have been read, whom the Government might do very well in letting ride at anchor here, without going abroad. p. 503.

Le Marchant lost his appointment.

William Carling, a servant, gave evidence that De Berenger had dined twice at Mr. Basil Cochrane's: that on one occasion Lord Cochrane and Sir Alexander and Lady Cochrane were there, and on both occasions there were ladies as well as gentlemen present. p. 218.

‘ Trial,’
p. 222.

Joseph Wood, a messenger of the Alien Office, arrested De Berenger at Leith on April 8, and took possession of his writing-desk, containing papers, bank notes, guineas, half-guineas, and two napoleons, and a memorandum book containing the following entry :—

p. 224.

To C. J. by March 1st, 1814—£350—£4 to 5,000 assign one share of patent and £1,000 worth shares of Jn. De Beaufain at Messrs. H. to their care.—Believe from my informant £18,000 instead of £4,800—suspicious that Mr. B. does not account correctly to him as well as me. Determined not to be duped. No restrictions as to secrecy—requesting early answer.

See
Hansard,
xxviii. 121.

I think C. J. may be taken as Cochrane Johnstone and Mr. B. for Mr. Butt. Jn. De Beaufain was a name occasionally used by De Berenger.

‘ Trial,’
p. 224.

Lord Ellenborough agreed with Serjeant Best that this memorandum could not be taken as evidence against the Cochranes, but apparently it could be accepted as against De Berenger who had written it.

In his opening speech Mr. Gurney had said :

p. 51.

I will shew you that Mr. Fearn on the 10th of February drew a cheque on Bond and Co., for £56 5s. payable to Mr. Butt, and that it was paid partly in a fifty pound bank note and the same bank note was found in the possession of Mr. De Berenger when he was taken at Leith . . .

Mr. Pattersall, a partner in Bond & Co., gave evidence that Mr. Evans, one of their clerks, paid the cheque in question. As, however, Mr. Evans failed to answer his subpoena, Mr. Gurney was unable to prove this portion of his charges. I look upon the absence of Mr. Evans and the illness of Mr. Wright, the landlord of the Ship Inn, Dover, as very suspicious circumstances. I think it is extremely probable that these witnesses were kept out of the way by the conspirators, and would also remark that the other post-boy Ward was not called.¹ Had they given evidence, Mr. Gurney would probably have been in a position to prove, what had been proved

¹ The other postboy Adams also was absent.

before the Stock Exchange Committee, when Christmas gave his evidence 'with hesitation and apparent reluctance,' namely, that the one-pound notes which De Berenger gave as payment at Dover had been in the hands of Mr. Butt less than twelve hours previously, i.e. that Mr. Butt had supplied him on Saturday afternoon with the funds necessary for the Dover expedition.

Mr. Gurney next proceeded to prove Lord Cochrane's share in providing funds for De Berenger's flight. * Trial,
p. 230.

A cheque was paid to Lord Cochrane by Smallbone on February 19,¹ 1814, for £470 19s. 4d. Of the proceeds £20 19s. 4d. are not traced; a fifty-pound note is paid by Lord Cochrane to his coal-merchant. The remaining £400 are represented by a two-hundred-pound note, No. 634, and two notes of £100 each—18468 and 16601.

No. 634 passed from Lord Cochrane to Fearn, who sent Christmas with it to Bond's Bank, where it was changed into two notes of £100 each—19482 and 19592. These notes were again changed for one-pound notes. Sixty-seven of these one-pound notes were found in De Berenger's writing-desk.

The history of Nos. 18468 and 16601 is simpler. They were changed for one-pound notes. Of these notes forty-nine were found in De Berenger's trunk.

It is clear that the object of changing the notes so frequently was to increase the difficulty of tracing them. As these permutations are very puzzling, Mr. Atlay has given the evidence of the clerks at much greater length than I have. That the jury followed these proceedings with attention is shown by one of them asking for the numbers of the notes.

Lance was cross-examined by Scarlett with the object of showing that £200 of the money which Lord Cochrane had repaid to Mr. Butt was a repayment of a *bonâ-fide* loan.

Mr. Atlay has reprinted verbatim all Lance's evidence on the subject.

De Berenger had bought a watch at Hull from a watch- p. 245.

¹ In the trial it appears sometimes as February 10, which is a misprint.

maker named Bramley. Seven of the one-pound notes with which he paid for it were identified by bank clerks as having been part of what was paid to Fearn on February 24, for either No. 19482 or No. 19592.

Then there was another cheque of Mr. Butt's, dated February 25, drawn on Prescott & Co., for £98 2s. 6d. Of this £8 2s. 6d. is not traced, but £90 is accounted for. Two notes were given in payment, one fifty-pound note, No. 13396, and one forty-pound note, No. 6268. Proof was given that the forty-pound note was exchanged by De Berenger at Sunderland while passing under the name of Major Burne. The fifty-pound note was given by De Berenger to his servant W. Smith, who got it changed by Mr. Seeks. Mr. Seeks gave his evidence, and an attempt was made to corroborate his deposition by means of an entry, 'W. S. £50,' in a memorandum book of De Berenger's.

'Trial,'
p. 250.

Lord Ellenborough, however, said 'I think it is not evidence; it does not get the length of William Smith; but even if it were to be taken to refer to William Smith, it does not connect it with this bank note, or any other means of payment. I cannot translate "W. S." into "William Smith my servant," and "£50" into "this £50 bank note." You do not call William Smith?' Mr. Gurney answered 'No, certainly not, my lord. I shall leave that to my learned friends.'

The defence did call William Smith on the next day, and he admitted having received the notes in question from De Berenger on February 27, the Sunday he went away.

At the close of the proceedings Thomas Evans, clerk to Messrs. Bond, was called a second time on his subpoena, but he failed to appear, and Lord Ellenborough said: 'This entry will be no use to you.' The two napoleons found in De Berenger's letter-case were then produced, and Mr. Gurney closed his case.

Now came the first public intimation that it was intended to call witnesses for the defence. I have shown how Gurney strove to taunt the opposing counsel into doing so. He well knew the utter rottenness of the affidavits which had been published in the pamphlet for which Lord Cochrane

and Mr. Butt were responsible, and he scarcely believed that his opponents would dare to run the risk of putting any witnesses in the box. That his views were shared by the opposing counsel is proved by the following memorandum, which was sent to De Berenger during the progress of the case :—

We both agree in thinking that if we were to attempt the *alibi*, it would not only be of no avail against the body of proof now given, but would probably end in the witnesses being sent to Newgate ; and when the day of punishment comes, making or attempting to make such a defence will probably enhance that punishment by the addition of the pillory.

No power on earth can prevail in this case, if the prosecutors prove the rest of the case, and we dare not in justice to our client, allow him to heap greater destruction upon himself without raising our warning voice against so mad a project.¹

J. A. PARK. J. RICHARDSON.

Lord Brougham held equally strong views about calling witnesses.

¹ This memorandum is taken from a pamphlet entitled 'De Berenger Detected,' published in May 1816 by W. Jackson in Lord Cochrane's interest. It is there said that this memorandum was given to De Berenger by his counsel previous to the examination of the alibi witnesses, and to have been shown by him to a person who sent a copy of it to Lord Cochrane (see p. 13 of 'De Berenger Detected').

[Was this person Cochrane Johnstone ?—ED.]

CHAPTER X

THE ADJOURNMENT

‘ Trial,’
p. 254.

At 10 P.M. Serjeant Best said : ‘ I wish to apprise your Lordship that I think it will be necessary for the defendants to call witnesses.’

Lord Ellenborough answered : ‘ I should wish to hear your opening, and to get into the defendants’ case if I can, there are several gentlemen attending as witnesses who I find cannot, without the greatest public inconvenience, attend to-morrow.’ Mr. Park, De Berenger’s counsel, wished for an adjournment, but was overruled by Lord Ellenborough. The other counsel do not appear to have spoken on the subject, and Serjeant Best opened the case for the defence of Lord Cochrane, Cochrane Johnstone, and Butt.

Looking at the whole of Lord Ellenborough’s conduct of the case, the charge of having refused an adjournment and forced the defendant’s counsel to speak when weary and exhausted, is undoubtedly the one, next perhaps to the refusal of the new trial, which has most impressed, not only the popular mind, but members of the legal profession.

As this is essentially a question connected with the legal practice of the period, I leave it to be dealt with by Mr. Atlay.

Atlay, p.
306 .

The really strange thing is that, with the qualified exceptions which I am about to mention, it never received any confirmation at the time the persons who are represented as having been so completely exhausted, and as having their prayer for adjournment refused.

In the first place, as to the jury. On referring to the short-

hand note we find that the jury took no part at all in the discussion as to the adjournment. Yet they were a highly intelligent body of men, who, as we see from the report, were taking careful notes, and who every now and then interposed with questions exceedingly to the point. It is impossible to believe that a representation made by them that they were too fatigued to go on would not have met with respectful consideration from the Bench. Even had Lord Ellenborough been actuated by the sinister motives imputed to him, his experience as an advocate would have taught him the folly of setting the jury against him by refusing a reasonable request. In the affidavit of June the 14th, Lord Cochrane swore 'that he had been informed, and verily believed that the jury . . . were so completely exhausted and worn out by extreme fatigue . . . that justice could not be done to him.' Here the matter rests; no one of the twelve men ever came forward to confirm this statement on oath or otherwise. Affidavits were flying about for weeks afterwards, and we should have thought that it would not have been impossible to find at least one honest man amongst them to testify to his extreme fatigue. We know, at least Alderman Wood said so, that one of the jury had expressed his willingness to state publicly the effect produced on his mind by Lord Cochrane's statements after the verdict; it is strange that this communicative jurymen did not mention his fatigue and that of his colleagues, if indeed they suffered from it. Be it as it may, the Alderman did not allude to the subject, and as far as the jury are concerned, this statement of Lord Campbell's goes absolutely unconfirmed.¹

Supra, p.
183.

Supra,
p. 215.

How does it stand as regards the Counsel? In a matter of such gravity the only safe plan is to refer to the shorthand report of the trial itself. It will be remembered that Serjeant Best led for Lord Cochrane, his uncle, and Butt; Mr. Park for De Berenger; and Serjeant Pell for Holloway, Lyte, and Sandom. Mr. Alley threw up the sponge for M'Rae and took no part in the discussion. The case for the prosecution closed apparently about 10 P.M., and Best immediately volunteered the statement that the defence were going to call witnesses without saying anything whatever about adjourning. Lord Ellenborough replied that he wished to 'hear your opening, and if possible to

Atlay, p.
307.

'Trial,'
p. 254,
supra,
p. 123.

¹ I should like to refer the reader to the conversation which took place between Lord Ellenborough and the jury relative to an adjournment in the trial of Watson for high treason as an illustration both of the way in which jurymen were accustomed to interpose in such discussions and of the method adopted by the Bench in trying to meet their convenience.

'State Trials,'
xxxii. 578,
and *infra*,
pp. 268 and
269.

get into the defendants' case.' Best said no more, but Park gave as an objection the difficulty, which he said his lordship would feel equally with them, arising from fatigue owing to the length of their attendance in Court. They would proceed, however, if his lordship desired it. Lord Ellenborough repeated that he wished to get into the case so as to get through, if possible, the examination of several witnesses upon whom the public business of several offices depended. Park then shifted his ground. He had undergone very great fatigue, he said, which he was able to bear; but he submitted the hardship on parties charged with so serious an offence, of having their case heard at this late hour, and then a fresh day being given to Gurney for his reply. Lord Ellenborough answered that the sun would be almost up before they could adjourn, and it could not be said that it would be a fresh day. If they required it, he would sit through rather than that.

Atlay,
p. 308.

From this it is clear that Best never asked for an adjournment, and that Serjeant Pell took no part in the discussion at all. The application proceeded from Park alone, and in confirmation of this, a contemporary report,¹ as well as *The Times* newspaper, asserts that an application for an adjournment was made by De Berenger's Counsel. Yet, in the face of this, Lord Campbell says that 'all (Counsel and jury) prayed for an adjournment.' We can well understand why Park should have been more anxious for time to consider his position than the other leaders. Pell called no witnesses; Best had practically committed himself to his line of defence, but to Park it must have been of the utmost consequence to make a final effort to dissuade his client from launching his desperate alibi in the face of the unshaken testimony as to the identity of De Berenger with Du Bourg. As a matter of fact, however, he suffered no loss on this score. Best's speech occupied nearly two hours; De Berenger was in Court, close to his Counsel,² and there was ample opportunity for the consultation which resulted in Park reluctantly opening his alibi to the jury.

¹ *The Trial of Lord Cochrane and Others for Conspiracy*, printed for Coxhead, No. 53, Holywell Street, and Hughes, Ludgate Hill. At p. 32 we read 'Mr. Park, on behalf of the defendant Berenger, suggested the propriety of adjourning the trial, not on account of the fatigue that the Counsel had endured, but for the ends of justice, in order that the case of the defendants might be fairly heard.'

Hansard,
xxviii. 787.

² In the debate of July 19th, 1814, Garrow describes De Berenger as 'sitting in an unsuspected part of the Court, looking down and writing, as if he were a clerk to one of the Solicitors.'

How far, again, is Lord Campbell's statement confirmed by the Counsel engaged in the case? No less than ten appeared for the various defendants, and of these only two, so far as I can discover, have ever alluded to the matter. Lord Brougham, as we shall see shortly, did complain of the prolonged sitting, not on account of fatigue, but because it resulted in the evidence for the defence being thereby separated from the speeches. We have seen how this argument was dealt with in the House of Commons. Searlett is said to have remarked at a dinner-table, many years after the trial, that Lord Cochrane's innocence might have been established had not the Judge arbitrarily hurried on the defence at a late hour in the evening, when all parties were wearied. I have some comments on this in the following chapter, and will merely say here that he had ample opportunity during the months immediately succeeding the trial of making this statement, and that he did not avail himself of it.¹

p. 276.

The silence of Counsel on this point is the more remarkable that some of them had seats in the House of Commons, and could hardly have refrained from confirming Lord Cochrane on this point, had it been well grounded; while professional etiquette may well have prevented them from contradicting him. We know that they furnished Mr. Abercrombie with a statement as to matters connected with the trial on the occasion of Lord Ebrington's motion, but there is nothing about the adjournment in it. Equally remarkable is their silence when it was debated again on the motion for impeachment. Lastly, is it likely that such men as Best and Scarlett and Brougham would have acquiesced calmly in the continuance of the sitting if they had felt that it was fraught with serious injury to their client? Best had got to do what he could with a bad case, and he may well have thought that a late hour in the evening was no unfavourable time for doing it. I have dealt elsewhere with the difficulties that confronted him, and have suggested what I believe to be the explanation of his tactics.

Atlay,
p. 309.

There are, however, one or two points to consider. Was this an unusually prolonged sitting, and, if so, had Lord Ellenborough valid reasons for acting as he did? With regard to the first of

Atlay,
p. 310.

¹ It is true that in his letter to the electors of Westminster of August 10, Lord Cochrane says that Best 'intimated at the time, and afterwards authorised me to assert, that he was not able to do justice to the cause'; but without Best's exact words this goes for little, when compared with his silence on the subject in the House of Commons, of which he was a member during the years 1814-16.

'Autobiography,'
vol. ii.

these we may admit that to those whose ideas of judicial procedure are derived solely from the Royal Courts of Justice in the Strand, which sit at 10.30 and rise at 4, with an interval of half an hour for refreshment in the middle of the day, this eighteen-hour sitting (from 9 A.M. on Wednesday to 3 A.M. on Thursday) must seem appalling. On circuit, however, when an uncertain amount of work has to be accomplished in a fixed amount of time, very prolonged sittings are by no means a rarity even now. There are few Common Law barristers of the older generation who cannot tell of occasions when they heard the chimes at midnight within the walls of an Assize Court. A friend of mine on the Oxford Circuit only the other day was mentioning a sitting of the Stafford Quarter Sessions to hear a rating appeal which lasted from 9 A.M. to 12 P.M. without an adjournment of any sort. I myself have heard Sir Henry Hawkins at Worcester Assizes sentence three men to death between 12 and 1 in the morning;¹ and *The Times* of Monday, the 10th of December, 1888, records the late Sir James Stephen as returning from Exeter Assize Court at 2 A.M. These, it may be said, are fortunately exceptional cases; but in the early years of the century twelve-hour sittings in criminal trials were the rule. The Old Bailey sat from 9 A.M. till 9 P.M. until the establishment of the Central Criminal Court in 1834, and from the pages of 'Howell's State Trials' instances of desperately long sittings could be multiplied indefinitely.

'State
Trials,'
xxi. 486.

xx. 891.

xxviii. 524.

'State
Trials,'
xxiv. 199 *et*
seq.

Atlay,
p. 311.

Lord Mansfield, for instance, in trying Lord George Gordon, sat till a quarter-past 5 A.M. There is a Scotch case, *Rex v. Sir Archibald Kinloch*, in which the jury returned their verdict at 8 A.M.; and in the famous trial of Burke at Edinburgh in 1828 for the Westport murders, the Court sat for twenty-three hours, sentence being pronounced at half-past 9 on the morning of Christmas day. The trial of Colonel Despard for high treason lasted till 3.30 A.M.,² and that of his associates from 9 A.M. on Tuesday, January the 8th, till well-nigh 8 o'clock the next morning, while such cases as those of Hardy, in which the Court sat on eight successive days,³ from 8 or 9 to 12 and 1 at night, must have imposed an even severer strain on Judge, jury and Counsel. At this period, and for long after, adjournments in criminal cases were looked upon with

¹ *Reg. v. Boswell and others*, *The Times*, February 20, 1890. The Judge asked the jury if they would rather he postponed his summing-up till the morning, but they preferred to go on.

² It may be noted that Despard's counsel were Best and Gurney.

³ October 28 to November 5, 1794, excepting November 2, which was a Sunday.

suspicion. Ponsonby gave vent to this feeling in his speech on the motion to impeach Lord Ellenborough. Mr. Justice Park, the same Park who defended De Berenger, only permitted with reluctance the trial of Thurtell for the murder of Weare to be adjourned at a late hour;¹ and in 1819 Scarlett moved unsuccessfully for a new trial in a case of conspiracy on the ground that the jury had been allowed to separate without the consent of the defendants.

*Rex v. Kin-
near and
others, 2
Barnewall
and Alder-
son, p. 462.*

A word, too, must be said as to the excessive fatigue of the Counsel. We have seen with what scorn Garrow rejected the idea that a man was unfit to discharge his duty to his client after fifteen hours in Court, and it should be remembered, moreover, that Best, Cochrane's Counsel, began his speech at 10.30, and had finished soon after midnight. The Counsel of those days were accustomed to carry on their daily avocations under circumstances of hardship and discomfort at which their modern successors would stand aghast. Long sittings, foul air, crowded Courts, were incidents of their everyday life; evening sittings were part of the routine not only of the Old Bailey but of the Rolls Court. How the business was transacted on circuit within living memory there are many still amongst us who can narrate from personal experience. An old-fashioned upper room, converted into two Courts by the intervention of a curtain or a wooden partition drawn across the middle, the Crown Court at one end, the Nisi Prius Court at the other; a babble of voices, a dim and flickering light, Counsel, attorneys, jurors in waiting, witnesses, spectators, all crowded into the narrowest limits. These were the surroundings that hedged in the majesty of the law in our country towns. No adjournment for refreshment, scant opportunity for leaving the Court for the most necessary purposes; leading Counsel busily engaged in both Courts at once, having been at consultation at eight, and with many hours of work before them on the rising of the Court. Were men nurtured in this school likely to be incapacitated by even such a sitting as Lord Cochrane complains of? And amongst

*Atlay,
p. 312.*

¹ He is reported as saying that a case ought to go on until it was closed, and that 'he could not order the Court to be adjourned unless the jury desired it. He was for himself perfectly willing to go on to finish the case before they separated. He had no personal wish on the subject. He had been accustomed to bear fatigue of this kind, and he was willing to bear it.' Finally, after a fifteen hours' sitting he acceded to the wish of the prisoners for an adjournment on the express ground that the jury concurred in it.

'Lives of
the Chan-
cellors,'
viii. 365.

them was Brougham, of whom Lord Campbell writes with regard to the Yorkshire election in 1830: 'No man ever went through such fatigue of body and mind as he did for the three following weeks.'

But even if we grant that it was an unusual course to sit so late—and the technical objections to an adjournment in cases of felony do not apply to misdemeanors—we have still to consider whether Lord Ellenborough may not have had valid reasons for acting as he did. Many such reasons suggest themselves at once.

Atlay,
p. 313.

He may have thought it undesirable to expose the jury to the ordeal of making their way through the possibly hostile crowd that thronged the approaches to the Court and which would have dispersed by the small hours of the morning. He may have felt that if the jury were to be kept up late either night it was better that it should come in the middle of the proceedings than when he was summing up or when they had retired to consider their verdict; and we can imagine the outcry that would have been raised had his fiercely criticised charge been delivered towards midnight instead of in the afternoon, which would have been the case had the speeches of the Counsel been thrown over to the Thursday morning. But none of these suppositions are necessary. Lord Ellenborough himself gave his reasons.

Supra,
p. 123.

'There are several gentlemen attending as witnesses,' he said, 'who, I find, cannot, without the greatest public inconvenience, attend to-morrow. . . . There are several witnesses upon whom the public business of certain offices depend.'

Atlay,
p. 313.

We know who those witnesses were—Lord Melville, the First Lord of the Admiralty; Colonel Torrens, the Secretary to the Commander-in-Chief; and Mr. Goulburn, the Under Secretary of State for the Colonial Department. They had attended in Court on the Wednesday on subpoena, having doubtless arranged their official business before starting, but they could not have foreseen the possibility of spending Thursday there also, or have made provision for the events of another twenty-four hours. Anyone with the slightest knowledge of the working of Government Departments will realise what disorganization would be wrought by the unexpected absence of such men from their offices for a single day, even at a period of peace and slackness. But the early days of that June were no ordinary times.

We were at peace with France, it is true, but the war with America was raging, and hostilities there were about to enter

on a new and critical phase. The cessation of the war with France had left a large number of line-of-battle ships and other vessels in the Mediterranean and on other stations where they were no longer needed and only formed a useless expense to an overburdened nation. Many of these had to be paid off, and the crews of others to be transferred to the ships which were being dispatched to the coast of North America. Not only was part of our fleet being transformed from a war to a peace footing, but the remainder was being shifted to a new base to assist the military operations against the United States and to protect our commerce from their swarming privateers. Troops had to be brought home from the South of France and carried across the Atlantic, and British vessels were even being employed in transporting the Russian guards to their native country. It was no mere routine duty that rendered imperative the presence of Lord Melville at his office.

Atlay
p. 314.

These remarks will apply *mutatis mutandis* to Colonel Torrens and Mr. Goulburn. Many of the duties of our modern Secretary of War were then discharged by the Secretary for the Colonies, and he was not only burdened with the multifarious transaction arising from the return of our soldiers at the conclusion of the Peninsular War, but he had on his hands the details of the less glorious strife in America, where, for the moment, we seemed to have lost the control of the Canadian lakes, and where the expedition to Washington was on the point of being launched. Any moment might bring important despatches from the seat of war which would brook no delay.

Ibid.

It would be waste of time to enlarge upon the duties of Colonel Torrens, as Military Secretary to the Commander-in-Chief, at such a period, especially when his superior, the Duke of York, was fully engaged in paying the attention due from a Prince of the Blood to our Royal guests, the Allied Sovereigns, who had just landed in England, and in connection with whose visit a military review had been ordered in Hyde Park for June 20.

Taking these matters into consideration, it can hardly be said with truth that Lord Ellenborough 'assigned insufficient and artificial reasons'; and though it is true that the length of Counsel's speeches prevented him from proceeding with the examination of the official witnesses previous to the adjournment, as he had desired, they were still taken at an early hour the next morning, which they could not have been had the speeches

Vide supra,
p. 242.

come at the opening of the Court, and they were consequently released from attendance in time to spend the best part of Thursday at their offices. It is not too much to conjecture that urgent representations on the part of these witnesses to take their evidence and dismiss them that night must have reached the Bench, and that such representations were based on grounds of the public service.

Still, it may be said that no consideration of convenience to the public ought to have weighed with the Judge in comparison with the possibility of inflicting injustice on the accused ; and I think, though I have never seen it suggested, that there was passing through Lord Ellenborough's mind an idea which rendered it imperative, in the interests not only of justice but of the nation at large, that the prisoners' line of defence should be disclosed before the Court rose.

In the days immediately following the perpetration of the fraud, rumour had been busy with the name of Lord Yarmouth ;¹ and we have seen, moreover, how his name had been introduced into the story by Lord Cochrane's affidavit of March 11, which represented De Berenger as borrowing a coat and hat in order to visit him amongst others upon the day of the fraud.

Lord Yarmouth had been subpœnaed for the defence, and was seated on the Bench, but no one in the Court, except the prisoners' Counsel and attorneys, could have any notion of the nature of the evidence which he would be called upon to give. We know now that he was only examined to confirm the statement of previous applications having been made on the part of De Berenger to obtain employment on board the *Tonnant*, and that he was asked questions as to the handwriting of the letter, and as to the uniform of his corps of sharp-shooters. But, for all that Lord Ellenborough knew, the defence might be going to call him to prove that De Berenger had actually visited him on that eventful morning in the disguise supplied by Lord Cochrane, and to question him as to what had taken place. Even if direct criminality was not imputed, the mere insinuation could not fail to draw him into the circle of those to whom guilty knowledge was attributed. If it could be shown that the pretended

Atlay,
p. 316.

'Life and
Times of
Lord
Brougham,'
ii. 197-8.

¹ Brougham to Earl Grey : 'Of the Cochrane business I know nothing, except that I have received general retainers for the respective parties within the last three or four days, apparently in the contemplation of some proceedings in a high tone. Who is implicated I can't say, except as I see in the newspapers. Yarmouth and Lowther were at first much talked of.' March 12, 1814.

messenger had come to Lord Yarmouth from Lord Cochrane's house, there would be a strong suggestion that the one knew as much of the fraud as the other.

Lord Yarmouth, afterwards sixth Marquess of Hertford, had played a prominent part both in society and in political life. It was far from improbable that a defence, some of the agents of which were none too scrupulous, might seek to shift part of the responsibility of the fraud, or at any rate a share in the guilty knowledge of it, on to the shoulders of their witness. And there were circumstances which made such a prospect extremely material to the public weal. The Allied Sovereigns were enjoying the hospitality of the English nation, and Lord Yarmouth had been appointed to the especial charge of the Czar of Russia during his visit. Our guests were to ride through the City on the Thursday morning; it would be Lord Yarmouth's duty to accompany the Czar, a duty which we know from the Press of the day he actually fulfilled before going into Court. These ceremonies were no mere pageants, no mere matter of parades and processions. Not a Sovereign in Europe could at that moment have traced the boundaries of his own dominions. It was of the utmost importance that this meeting of the conquerors should pass off without any contretemps. Surely Lord Ellenborough was justified in refusing to adjourn the Court, until he knew from the lips of Counsel that no effort was to be made to draw Lord Yarmouth into the meshes of the conspiracy.

Times,
June 10,
1814.

Atlay,
p. 317.

CHAPTER XI

SERJEANT BEST'S SPEECH

SERJEANT BEST's speech occupies thirty-six pages in the Report of the Trial, and it is well to consider what he had to go upon before dealing with it.

The principal evidence against Lord Cochrane came under three heads.

1. His Omnium transactions.
2. The traced bank notes.
3. Gift of a disguise to De Berenger.

Atlay,
p. 136.

1. His Omnium transactions had been admitted both in pamphlet and affidavit. That Gurney had made a mistake in saying that Lord Cochrane had been a speculator for one week only had been proved in cross-examination.

2. That nearly all the produce of a cheque of Lord Cochrane's drawn on February 19 had reached De Berenger between the 21st and 27th of that month had been admitted ; but it was pleaded that its produce had been through the hands of Butt and Cochrane Johnstone as well, and that as regards one sum of £200, Serjeant Best contended there was proof that Lord Cochrane gave it to Mr. Butt in payment of a *bonâ-fide* debt. As regards the other £200, the memories of Lord Cochrane and Mr. Butt remained blank, not only until after the trial, but until after the demand for a new trial, when they suddenly recovered them. The natural inference is that the accounts afterwards drawn up would not have stood cross-examination, though they might be good enough for the uneducated portion of the Westminster electorate.

'Letter to
Lord Ellen-
borough,'
pp. 144-
15.

Serjeant Best took full advantage of a slip made by Gurney in his opening speech, when he said Lance had changed some notes which the evidence afterwards proved were changed by Christmas. Serjeant Best mixed up the notes and rang the changes on them so skilfully as to make it appear that he had accounted for Mr. Butt's having received both sums of £200. The hour may have been late, but never was Serjeant Best more wideawake than when he performed this masterly piece of sleight-in-hand.

3. As regards the gift of a disguise, Serjeant Best had before him Lord Cochrane's affidavit describing De Berenger as being dressed in 'a grey great coat, a green uniform, and a military cap.' And he probably had before him Lord Cochrane's instructions to his solicitors in which De Berenger's dress was said to be 'a grey great coat without any trimming, a green coat or a *coat with a green collar under it*,' which is a weakening of the position as taken up in the affidavits.

'Letter to
Lord Ellen-
borough,'
App. vii.

The pamphlet published by Lord Cochrane and Mr. Butt containing the affidavits of his servants and those of De Berenger was also before him, and by the time he came to make his speech he must have had somewhat more than a shrewd suspicion that none of these affidavits were to be relied upon. There had been a consultation at his chambers on June 6, the result of which is described as follows by Lord Cochrane himself:—

'Autobio-
graphy,'
ii. 456 n.

From an item in my Solicitor's bill dated June 16, only two days before the trial, I extract the following:—

'Attending a consultation at Mr. Serj. Best's Chambers, when your case was fully considered, and all the Counsel were decidedly of opinion that you must be defended jointly with the other defendants; and the Counsel recommended your servants being in attendance during the trial, although they still remained of opinion that neither they nor any other witness ought to be examined on your part.'

'Letter to
Lord Ellen-
borough,'
App. vii.

What Brougham thought about calling the servants we have already seen, and there is little doubt that Serjeant

Law Mag.,
xi, 195.

Best had the benefit of hearing his opinion before commencing his speech. Whether Serjeant Best was aware that on June 7 a letter from Lord Cochrane had reached his solicitors, 'desiring that Mary Turpin's statement that De Berenger's coat was red, should be expunged from the brief,' is not clear.

'Affidavit
of the
house-
keeper,'
published
by Lord
Cochrane
in 'Letter
to Lord
Ellen-
borough.'

'De Beren-
ger's Letter
to Lord
Cochrane.'

'Trial,'
p. 272.

The cap and sword were both left at Lord Cochrane's house. The hackney coachman who brought Lord Cochrane from the lamp manufactory and took De Berenger away from Green Street never appears to have been found, or, if found, he was kept away like Davis, who had been allowed to go to sea.

Serjeant Best said that Lord Cochrane never thought of assisting De Berenger to escape from his creditors, but only lent him clothes to enable him to go to Lord Yarmouth and Lord Melville, and remarked that the jury had 'no positive evidence of anything that passed in the house of Lord Cochrane, except that evidence which my learned friend has given you from the mouth of Lord Cochrane himself.'

I think that I have clearly shown the exceedingly difficult position in which Serjeant Best was placed, by being unable to call the servants to corroborate Lord Cochrane's and their own affidavits. The jury were aware of these affidavits, and the absence of their makers from the witness-box must therefore have been most conspicuous.

p. 282.

Serjeant Best admitted Cochrane Johnstone's visit to De Berenger on February 26, but said that he would show that the payments to De Berenger were justifiable payments arising out of business transactions. He denied that the Holloway plot had anything to do with his clients.

p. 291.

When he sat down he spoke of fatigue from having been thirteen or fourteen hours in Court, but his speech does not show a sign of it.

p. 292.

Mr. Park spoke next for about two hours in defence of De Berenger; but as his client has since admitted his guilt, it is unnecessary to give an account of his speech.

p. 319.

Mr. Pell then addressed the Court, and spoke apparently for about one hour in favour of Sandom, Holloway, and

Lyte. When he concluded it was three o'clock on the Thursday morning.

Lord Ellenborough said: 'Gentlemen of the Jury. It appears to me that this would be the most convenient time for dividing the cause, as the evidence will occupy considerable time probably. I cannot expect your attendance before ten o'clock.'

CHAPTER XII

THE TRIAL—SECOND DAY

' Trial,'
p. 340.

ON the second day of the trial Lord Melville, First Lord of the Admiralty, Colonel Torrens, Secretary to the Commander-in-Chief, Mr. Henry Goulburn, Under-Secretary for the Colonies, proved that Admiral Sir Alexander Cochrane had applied for De Berenger to be allowed to accompany him to the North American Station.

p. 347.

Thomas Dewman, who had been a servant in the Cochrane family for seventeen years, was examined by Mr. Scarlett.

He recollected a gentleman coming to Lord Cochrane's house in a hackney coach ; he had never seen him before or since that day. The gentleman sent him with a note to Cumberland Street, where Lord Cochrane had gone to breakfast, not finding him there, he returned to Green Street, and then he went with a glass globe and the note to Mr. King's. On Dewman's return from Cumberland Street the gentleman took the note from him and said he would add three or four lines to it. Dewman then took the note to Mr. King's, there he found Lord Cochrane, who read the note in his presence, and said, ' Then I must return,' or ' Well, Thomas, I will return.' He had attended on Major Cochrane, the brother who was in the south of France, when he first went into the army.

Dewman himself did not return to Green Street until about 2 P.M.

Scarlett also asked Dewman :

Q. When did Davis quit him ? (Lord Cochrane.)

A. Davis left him about two days, or three days it might be,

before he went into Green Street ; his time was up then, but he was in Green Street. Davis was not in his Lordship's service at that time, but he happened to be in the kitchen when the gentleman came.

Q. What is become of Davis ?

A. He is gone with Admiral Fleming to the West Indies.

' Trial,'
p. 349.

Davis had previously stated in an affidavit which appeared in the Cochrane-Butt pamphlet that he knew De Berenger.

Now Admiral Fleming had sailed in the *Eurotas* at the end of April. I have already said that I think it most unlikely that Davis did not tell Dewman who the strange visitor was. Would Dewman have run on his errands without knowing his identity ?

It should be noticed that though Scarlett had the reputation of being one of the ablest men at the bar, and though Brougham was by his side, ready to undertake the next point in Lord Cochrane's defence, neither of them dared ask Dewman a single question on the critical point of the dress worn by De Berenger when in Green Street.

The first witness called for Cochrane Johnstone was Gabriel Tahourdin. He had known De Berenger for five or six years, and De Berenger had written a thousand letters to him. Cochrane Johnstone he had first met in May 1813. Cochrane Johnstone had some premises in Alsop's Buildings (apparently the site of the modern Madame Tussaud's) which were to be made into a sort of Ranelagh. De Berenger had drawn architectural plans with colonnades, &c. The plans were exhibited in Court to show that they were worth the money paid. On February 22 (the day after the fraud) a correspondence began between De Berenger and Cochrane Johnstone and Tahourdin as to his remuneration for these plans.

Doubts were thrown as to when these letters were actually written, as they had not been through the post, and had, in consequence, no postmarks.¹

Lord Yarmouth deposed that he was Lieut.-Colonel Commandant of the Duke of Cumberland's Sharpshooters,

¹ At that time envelopes were not in general use.—ED.

and that De Berenger was a non-commissioned officer and acting adjutant. He had known De Berenger for three years, and he did not believe the Dover letter to be in De Berenger's writing. He described the uniform of his corps as 'the waistcoat green with a crimson cape,'—

'Trial,'
pp. 376-7.

Some have got it a little darker than others but it should be a deep bottle green with a crimson collar; the great coat is a waistcoat with black fur round it consequently no crimson collar.

Q. The body in your uniform is not red?

A. It is deep bottle green.

Q. A juryman. A jacket or a coat?

A. It is a waistcoat, very like the light horse uniform.

A juryman. If Colonel De Berenger had appeared before your lordship in the uniform of his corps, would it have been anything extraordinary?

A. Nothing extraordinary, it would have been more military that he should do so, though I never exacted it.

As it is now admitted that De Berenger's alibi was all false, no remarks on it are necessary.

The evidence for this alibi occupies fifty-two pages of the 'Trial.' When Mr. Gurney rose to reply, he said that—

'Trial,'
p. 432.

It is a duty in which it is impossible to feel pleasure; for every gentleman must feel degraded in the degradation of a gentleman, and every gentleman must feel mortified in the disgrace of a man whose name is associated with the naval and military glories of his country. But we are here to try these defendants by their actions; and whatever their conduct may have been in other respects, by those actions must they stand or fall.

Gentlemen, if at the outset of this case, I addressed you with confidence, as to the result, I address you now with confidence increased tenfold, when I recollect the arguments by which these defendants have been defended; when I recollect the evidence which *has* been adduced in their defence, and when I recollect too the evidence which has *not* been adduced in their defence; the first, as it appears to me totally failing, in making out a case of innocence; the two latter concluding to their guilt.

Then he spoke of the chaise or Holloway plot :—

Gentlemen, if there were two conspiracies, then miracles have not ceased ; for unless you can believe, that a most extraordinary miracle has occurred, it is quite impossible to conceive that there were two plots. ‘ Trial,’
p. 433.

These three speculators held so much stock that they had been buying as a person must do, to keep up the market to redeem himself from loss ; and on this memorable day, all this stock is sold, it is sold at a profit of upwards of ten thousand pounds ; and if it had been sold without the profit of one single farthing, still the getting out without a great loss was to them very great gain. p. 436.

One month later came the news of the rupture of the Congress of Chatillon, had such news come on the morning of February 21 *the losses of the defendants would have been one hundred and sixty thousand pounds.* Ibid.

Upon the identity of De Berenger we have had for the last two hours, the evidence which has nauseated everyone in Court ; the evidence of the alibi, which no man living can believe ; in which no two witnesses agree ; in which we have contradiction after contradiction from every one of them. pp. 436-7.

Knowing that an alibi would be attempted, I defeated it by anticipation. I take up De Berenger at Dover as I would a bale of goods—I have delivered him from hand to hand from Dover to London, I have delivered him into the house of Lord Cochrane, and I have Lord Cochrane’s receipt acknowledging the delivery.¹ p. 437.

My learned friends had requested you would not suppose Lord Cochrane was capable of making a false affidavit. Gentlemen, that Lord Cochrane would have been incapable of deliberately engaging in anything so wicked some time ago, I am sure I as earnestly hope as I am desirous to believe ; but you must see in what circumstances men are placed, when they do these things ; Lord Cochrane had first found his way to the Stock Exchange ; he had dealt largely in these speculations, which my learned friends have so liberally p. 439.

¹ This last sentence referred to Lord Cochrane’s affidavit of March 11, to be found *supra* p. 64.

‘ Trial,’
p. 440.

branded with the name of *infamous* ; he had involved himself so deeply, that there was no way, but by this fraud, of getting out of them ; he had got out of them in this way, and then he found, as guilty people always do, that he was involved still deeper ; he found the great agent of the plot traced to his house, and traced into his house in the dress in which he had perpetrated this fraud ; he was called upon for an explanation upon the subject.

Gentlemen, he was gone to perdition, if he did not do something to extricate himself from his difficulty ; then it was that he ventured upon the rash step of making this affidavit, and swearing to the extraordinary circumstances upon which, as I commented so much at length in the morning of yesterday, I will not trespass upon your attention by making comments now.

p. 442.

My learned friends were properly anxious not to leave Lord Cochrane’s affidavit to stand unsupported. They were desirous of giving it some confirmation, and they exhausted two or three precious hours this morning in calling witnesses to confirm it, but those witnesses were called to confirm the only part of the affidavit which wanted no confirmation ; they were called to give Lord Cochrane confirmation about applications to the Admiralty, and applications to the War Office and Colonial Office, by Sir Alexnader Cochrane for De Berenger ; and after they had called witness after witness to give this confirmation upon this insignificant and trifling point, they leave him without confirmation upon that important, that vital part of this case to my Lord Cochrane, *videlicet* : the dress which Mr. De Berenger wore at the time he came to that house, and had with him at that interview. . . .

When my learned friends had that servant (Dewman) in the box, they did not venture to ask that servant what was the dress of De Berenger. . . .

Ibid.

They then tell us that another servant is gone abroad with some admiral, and I pray you, as he was here long after this business was afloat, how was it he was suffered to go, unless his absence was more wanted than his presence ; but they have a maidservant who also saw him and she is not called ;¹ and my learned friends, though so anxious to confirm Lord Cochrane’s affidavit, leave him without confirmation utterly abandoned and hopeless.

Ibid.

¹ There was also Sarah Busk, but as at this time she had made no affidavit, Gurney may not have known of her. An affidavit had been prepared for her, but she fought shy of it. [She made one at a later period.—ED.] See *Letter to Lord Ellenborough*.

Mr. Brougham.—Davis had left.

Mr. Gurney.—I say why was he suffered to go away? The maidservant is still here, and she is not called.

On another point Gurney remarked :

When did Lord Cochrane furnish the name of De Berenger to the Committee of the Stock Exchange?¹ *On the 11th of March* ; Mr. De Berenger having quitted London on the 27th February, twelve days before ; and when my Lord Cochrane had no more doubt that he was out of the country, than that he himself was in existence ; he was gone to the north, not gone to the south, to Portsmouth, to go on board the *Tonnant* ; he had been gone twelve days, twice as long as was necessary to find his way to Amsterdam ; it was believed he was safe there, and when it was thought he was quite safe, Lord Cochrane was extremely ready to furnish the Stock Exchange Committee with the name of the party, and get credit for his candour. ‘ Trial,’ p. 443.

Then he referred to the payment of De Berenger, and asked why so much trouble had been taken to shift and change the notes.

Why, gentlemen, it is because one-pound notes are not traced as easily as notes for one hundred pounds ; people take these small notes without writing on them, but they do write upon such large notes as £100 and £200, and that they knew might afford means of immediate detection. . . . p. 446.

Recollect too, gentlemen, that this £400, which is shewn to come out of the hands of Cochrane Johnstone and Mr. Butt, after the 24th of February is also shewn to have come originally out of the hands of Lord Cochrane himself on a prior day ; and therefore you have the money coming out of the hands of all three ; the reward of the agent coming out of the hands of the persons who had been benefited by the fraudulent services of that agent. p. 447.

He concluded by saying—

It appears to me to be absolutely impossible to doubt respecting the guilt of the several defendants. De Berenger is Du Bourg. When De Berenger is Du Bourg, the rest all follows ; he the agent of others, unquestionably ; he was not himself the principal.

¹ The second report of Stock Exchange states that De Berenger's name was known to them five days before Lord Cochrane made his affidavit and that a warrant was already out against him.

'Trial,
p. 447.

You have had a mass of perjury exhibited to-day to extricate him, and consequently his employers. That like all falsehoods when detected, only serves to make conviction more clear and more certain.

Lord Ellenborough's summing-up has been much criticised by two of the defendants in this trial, Lord Cochrane and De Berenger. Mr. Atlay has reprinted the whole of it verbatim, as well as the whole of *The Times'* report of the trial, so as to show to those who wish to judge for themselves how little ground there is for these attacks, and for the repetition of them by other people. I shall deal with these misrepresentations *seriatim* in the chapters on the 'Autobiography' and on 'Lord Campbell's Account of the Trial.'

The evidence before the Chief Justice, and the admissions of Counsel, left the former no alternative but to believe in the guilt of all parties and to sum up accordingly. No attempt had been made to sustain the truth of Lord Cochrane's affidavit, except in unimportant particulars, and the Court had been disgusted by a fraudulent alibi, which if proved would not only have exonerated De Berenger, but also Lord Cochrane and his two companions. That Lord Cochrane should afterwards have admitted that Cochrane Johnstone had read to him De Berenger's brief before the trial, constitutes to my mind one of the most formidable pieces of evidence against him.

p. 452.

The Chief Justice first dealt with the legal aspects of the case, and then proceeded to comment on the evidence. With regard to the letter to Admiral Foley, he remarked 'that if De Berenger's letter had deceived Admiral Foley, the telegraph would have brought the news to London in less than half an hour. It is not impossible that the letter in question may have been written beforehand and brought down with him. It is clear that the letter produced is the one actually sent. Everybody recollects the sort of electric effect produced upon this town the moment the news now under consideration arrived.

When touching on Crane's evidence he said: 'He took a portmanteau that he had, and a sword, went in and came

out again, and gave me another shilling. The portmanteau was a small black leather one.' Lord Cochrane has blamed the Chief Justice for not adding to his account of the Crane portmanteau that 'it was big enough to wrap a coat in'; but when he came to Solomon's evidence the Chief Justice said: 'He [De Berenger] took them [namely, a military great coat, a military staff coat, a foraging cap, a star and a badge] away with him in a coach, he had a small portmanteau with him, you remember there is a leather portmanteau spoken of.' So that he by mistake gave De Berenger credit for having with him the portmanteau he left at Dover, which was big enough to wrap two coats in. This, I think, is the only slip he made, and it is in Lord Cochrane's favour.

'Trial,'
p. 477.

The Chief Justice omitted to comment on the fact that Best made no attempt to explain how both the sums of £200, which were the produce of Lord Cochrane's cheque, had found their way to De Berenger. Gurney had also omitted to allude to this point, though Lord Cochrane afterwards admitted it was one of the weakest points in his defence. Had Best then succeeded in deceiving them both, by the skilful way in which he manipulated the two sums of £200 notes?

Lord Ellenborough concluded by saying—

You will find the defendants not guilty upon the first and second counts of the indictment, as those allege facts and motives, in which they cannot all be supposed to have joined. p. 531.

A juryman.—They are guilty or not guilty of a conspiracy.

Lord Ellenborough.—Yes, a conspiracy, which is a crime that cannot be committed by one, it must be committed by more than one.

The jury retired at ten minutes after six o'clock, and returned at twenty minutes before nine with their verdict, finding all the defendants—'Guilty.' I may here remark that the jury appear to have followed the evidence with great attention. They intervened with questions no less than twenty times, many of them very much to the point.

The sentences were deferred pending an application for a new trial.

CHAPTER XIII

AFTER THE TRIAL

THE subsequent proceedings of the Court of King's Bench have been much misrepresented. It has been frequently asserted that Lord Cochrane was refused a hearing on the question of a new trial. It is true that he was refused a hearing on that subject on June 14, but he was heard without interruption on the 20th of that month. He was in the position of a speaker at a public meeting who at an early stage of the proceedings is ruled out of order by the Chairman, but who is afterwards listened to with attention, before the conclusion of the business in hand.

Mr. Atlay has given the following description of the proceedings on June 14 :—

Atlay.
p. 178 ;
Trial,
p. 532.

On the following Tuesday, June the 14th, Lord Cochrane appeared in person before the full Court of King's Bench, consisting of Lord Ellenborough and Justices Le Blanc, Bailey, and Dampier,¹ and asked that there should be a revision of the proceedings, and that a new trial should take place, at least as far as he was concerned. It had been his misfortune, he said, to suffer from an intimacy, or rather an acquaintance, with men over whose conduct he had no control whatever. Lord Ellenborough interposed by saying they could not hear him unless all the parties were present in Court ; it was the rule and they had acted on it that very morning. Lord Cochrane asserted that he held in his hands affidavits which could prove his innocence, but Lord Ellenborough said they could not forego the regular practice of the Court. They could not do it on the application of Counsel, and no more could they do it on his personal application. If

¹ These four Judges had constituted the Court before which Lord Cochrane was tried.

they were to adopt a different rule from the one they had acted on that very day, it might properly be said that there was one law for the rich and another for the poor. And Mr. Justice Dampier added, 'By the rules of the Court it cannot be; your Lordship has been informed of the practice of Court, and from that practice the Court has no power to depart.'

Rex v. Askew; Maule and Selwyn.

Lord Cochrane, however, succeeded in stating that 'before the late trial, so conscious was I of my innocence, that I did not think it necessary to instruct Counsel, as several gentlemen in Court knew. I never read over the brief on the subject till after the trial, when I found a very gross error had crept into it with regard to the dress of the stranger who called at my house; and my servant is in consequence represented as having admitted that he was dressed in a red coat. The fact was that, being questioned as to the colour of the coat, he stated that he appeared to be an army officer, to which he very naturally attached the idea of a red coat, for the servants did not see it.'

I have shown that Lord Cochrane did know what was in the brief. (See *infra*, p. 160-1.)

Six days later, on June 20, Gurney moved for judgment before the Court of King's Bench, which was constituted as on the previous occasion. Cochrane Johnstone and M'Rae were absent, De Berenger appears to have been in custody, but the rest of the defendants were in Court, when Serjeant Best moved in arrest of judgment for Mr. Butt only. He stated that 'Lord Cochrane has desired me not to move in his behalf,' but the Chief Justice told him: 'If you move in arrest of judgment for one, all have the benefit of it.'

'Trial,'
p. 535.

Atlay,
p. 179.

Mr. Park, on behalf of De Berenger, supported Serjeant Best's motion. Their arguments consisted of legal technicalities connected with the indictment.

Lord Ellenborough asked, when Park and Best had concluded their arguments:

Does Lord Cochrane wish to address anything to the Court?

Ibid

Lord Cochrane.—My Lord, I am desirous, previously to your passing judgment upon this matter, that I should have an opportunity of explaining those things which I deem essential to be brought under your consideration.

'Trial,'
pp. 549, 550.

Lord Ellenborough.—If you mean to offer any observations

'Trial'
p. 550.

in arrest of judgment, this is the proper time ; *we will afterwards hear, as a distinct thing, whatever may occur to you as fit to be presented to the Court, to induce them to grant you a new trial ; that is probably your object.*

Lord Cochrane.—I do not move in arrest of judgment.

Atlay,
p. 179.

The proceedings connected with the motion for arrest of judgment occupy twenty pages of the trial. The Chief Justice, Mr. Justice Le Blanc, Mr. Justice Bayley, and Mr. Justice Dampier, all gave their reasons for considering there was no ground for the motion. Their opinions were quoted in the Court of Appeal as lately as 1892 and 1896.

p. 180 note.

See Attor-
ney-Gener-
al's speech
of the 24th,
Hansard,
xxxiii. 241.
'Trial,'
pp. 554-63.

After the report of the evidence had been read by Lord Ellenborough, Lord Cochrane then *read* an extremely able address to the Court. It occupies nine pages of the trial, and was listened to without interruption. Yet Lord Campbell and other writers, who ought to have known better, by limiting their studies to what took place on June 14, and by carefully excluding all allusions as to what took place on the 20th, have left on the minds of their readers the erroneous impression that Lord Cochrane was not heard on the subject of a new trial.

The *Law Magazine*, vol. x. p. 229, remarks :

Practically as in *Tcal's Case*, as in *Lord Cochrane's* no hardship was suffered through the rule observed on the 14th, for the Court in the former case heard the arguments of counsel on the reading of the report, and would then have granted a new trial had justice required it ; and in Lord Cochrane's case the like opportunity was offered him as we shall see to impugn the verdict, and he accepted it and failed.

Lord Cochrane said that he had met De Berenger in public company, but was on no terms of intimacy with him. With Cochrane Johnstone he had the intercourse natural between such near relatives.

'Trial,'
p. 555.

Mr. Butt had voluntarily offered, without any reward to carry on stock transactions, in which thousands, as well as myself were engaged, without the smallest imputation of anything incorrect. The other four defendants were wholly unknown to me, nor have I directly or indirectly held any communication

with them. Of Mr. De Berenger's concern in the late fraud, I have no information, except such as arises out of the late trial. With regard to Mr. Johnstone and Mr. Butt, I am willing to hope they are guiltless. They repeatedly protested to me their innocence. They did not dare to communicate any such plan to me, if such was projected by them or either of them.

He stated that it had been said that, in offering his former affidavit, he had incurred the moral guilt of perjury without its legal penalties ; he now repeated his statement in a document duly sworn in Court, and it was confirmed by the affidavits of three persons who saw De Berenger in his house on February 21, and he was only prevented from bringing forward a fourth by his sailing to a distant station before he could possibly stop him for the purpose.

As regards the notes he said :

Mr. Butt voluntarily made purchases and sales of stock for me, and having received a small loan of money from him I repaid him with bank notes he used for his own purposes.

As regards his acquaintance with De Berenger, he stated :

It has been said that there was a suspicious degree of familiarity in his treatment of me and my house. I can only observe that over his conduct I had no control,

and that there was nothing extraordinary in his knowing of his change of residence.

He brought his brother's affidavit, and a surgeon's certificate to prove his brother's illness. The pretended Du Bourg would have terminated his expedition and found a change of clothes elsewhere had Lord Cochrane been an accomplice.

The circumstance of his obtaining a change of dress at my house, could never have been known if I had not voluntarily discovered it. . . .

My own fixed opinion is that he changed his dress in the coach because I believe that he dared not run the risk of appearing in my presence till he had so changed it.

He then referred to the small portmanteau, and went on to say :

‘ Trial,’
p. 562.

He presented himself to me in a grey great coat and a green under coat ; and if the persons whose affidavits I now tender had been examined on the trial, and they did attend for the purpose, I do feel persuaded that a very different impression would have been made on the jury and the world at large.

Atlay,
p. 183.

Lord Cochrane’s second affidavit of June 14 was then read. It occupies four pages of the Trial. Mr. Atlay has reprinted the whole of it. It is mostly a repetition of what has been previously stated ; he says, however, that he left London to rejoin the *Tonnant* on March 1, so that he admits having remained in London for ten days after the fraud, with the talk of the town ringing about his ears, without taking any public step in connection with it.

It was also stated in this affidavit :

‘ Trial,’
p. 566.

That when this deponent understood that a prosecution was to be instituted against him, he wrote to Admiral Fleming in whose service Isaac Davis, formerly this deponent’s servant, then was, under cover to Admiral Bickerton, at Portsmouth, and that Admiral Bickerton returned the letter, saying Admiral Fleming had sailed for Gibraltar.

Atlay,
p. 185.

It will be noticed that the dates of the letter and of the sailing are carefully omitted. The log of the *Eurotas* shows that Admiral Fleming hoisted his flag on board that ship on April 26, and that the *Eurotas* finally sailed on May 1, so that Lord Cochrane waited for at least two months after the fraud before attempting to detain a man whose affidavit he had already secured and sent to the Admiralty. He evidently did not wish to see the man *who knew De Berenger* in the witness box undergoing cross-examination, and that he took care not to write to Admiral Bickerton until he knew that it was too late.

Then again the affidavit went on to state : That this deponent sent his servants, Thomas Dewman, Elizabeth [sic] Busk and Mary Turpin to prove the dress De Berenger came in, but that only Thomas Dewman was called, and

that he was not interrogated about the dress, and it wound up by saying : Atlay,
p. 185.

That he hath been informed, and verily believes that the jury who tried the said indictment, and the counsel for the defence were so completely exhausted and worn out by extreme fatigue, owing to the Court having continued the trial without intermission for so many hours beyond that time which nature is capable of sustaining herself without reflection and repose, that justice could not be done to the deponent. ‘ Trial,’
p. 567.
Atlay,
p. 186.

It must be noticed that as regards the alleged exhaustion of the jury he only says ‘ he has been informed,’ &c., and that he quotes no name in support of his assertion. Also, that although the Court did not adjourn until three in the morning, Best’s speech in his favour was over at about 12.30.

The next affidavit, that of Thomas Dewman, was about to be read when Lord Ellenborough said :

This was a person called as a witness on the trial ; if the affidavit went beyond or contradicted what he there stated, it cannot be received.

Lord Cochrane replied.—Would your lordship permit me to explain the reason why he was not interrogated ? Atlay,
p. 187.

Mr. Justice Bayley.—It is a settled rule, not to allow the affidavits of persons who might have been called at the trial, much less of persons who were called.

Lord Ellenborough.—And if any were not called, they were not called under the discretion of your Lordship. It would be a very dangerous thing if persons whose evidence may have been discreetly kept back, should afterwards be admitted to come forward as witnesses. Ibid.

Mr. Dealtry.—The next is the affidavit of Sarah¹ Busk.

Lord Cochrane.—My humble hope is, that you will be pleased to grant a new trial, in order that these persons may have the opportunity of being examined : they were not called from an error in the brief, which (so little was I conscious of any participation in the fraud) I had not even read.² ‘ Trial,’
p. 658.

¹ She appears to be called Elizabeth Busk at p. 566, *Trial*.

² This is a juggle of words. It had been read to him. See Sir Samuel Shepherd’s and Sir Francis Burdett’s speeches in debate in House of Commons, July 19, 1814.

' Trial,'
p. 568.

Mr. Gurney.—My Lord, the Counsel for the defendant were not uninstructed, as to the evidence which these witnesses could give ; because annexed to the affidavit which your Lordship has stated, of Lord Cochrane, were the affidavits of all the servants, of the one who is not now in England, as well as of the three who are in England. They are all printed together in Mr. Butt's pamphlet, which was produced at the trial. Therefore the Counsel for the defendant were informed of every circumstance, and they might, if they had thought it would serve their client, have called all these persons as witnesses.

Mr. Justice Le Blanc.—There is no rule better established, than that after trial we cannot receive the affidavits of persons who were called or who might have been called as witnesses. Whatever might be the reason of keeping back their testimony that the Court cannot hear.

Ibid.

An affidavit from Major the Hon. William Cochrane was put in to show that he had been ill from January 1 until the middle of February, and that he had written to his brother, Lord Cochrane, early in February, to say that he then had little hope of recovery. A surgeon's affidavit was put in to corroborate his account of the illness. Then Lord Ellenborough said :

p. 570.

This affidavit is not even material to shew that Lord Cochrane was in possession of his brother's letter previous to the morning of the 21st February, so as to account for a connexion existing in his mind between the note he on that morning received, and the state of his brother's health, which should induce him immediately on the receipt of it to return home ?

Lord Cochrane.—I was not present at the trial, or those witnesses would have been examined.

Ibid.

Lord Ellenborough.—But those witnesses would not have gone to this point, and your mind must have been drawn to it at the time you made your affidavit, when you came to mention your brother's illness ?

Lord Cochrane.—My brother's affidavit states that he wrote to me early in the month and I received his letter on the Friday previous to the fraud.

Lord Ellenborough.—That was capable of being more distinctly verified.

Mr. Justice Bayley.—The original letter is not annexed to the affidavit ?

Lord Cochrane.—It is not. I had no idea of bringing the letter of my brother before a Court of Justice.

It will be recollected that in Lord Cochrane's affidavit of the 11th there is no mention of an illness, but only of an accident which might have happened to his brother.

An affidavit of De Berenger's was put in, pleading for merciful treatment. Mr. Butt also made a speech asking for a new trial.

I must here call attention to a matter that has been the subject of misconception and to Mr. Atlay's remarks thereon.

It has been pressed upon me that, to the lay mind, it appears as though Lord Ellenborough, in forming one of the Court which heard and determined the motion, was in effect sitting to determine an appeal from himself. This is a misunderstanding, due to a misapprehension of the procedure by which new trials were moved for and granted or refused in civil and criminal cases. Atlay,
p. 191.

In Lord Ellenborough's time, and for many years after, it was the unvarying custom for the judge who had tried the case to be present when the application for a new trial was heard by the Court sitting in Banc, if he was a member of the Court. The foundation of the application would be the judge's notes, and they were read over to the Court by the judge who had tried the case, if a member; if, however, the motion was made in the King's Bench with regard to a case tried before a Baron of the Exchequer or a Justice of the Common Pleas, the latter would send a copy of his notes, which would be read in Court by the junior puisne present, and, if need be, a personal interview with the judge who had presided would be sought and obtained.

If, however, the judge who had tried the case formed one of the Court, he not only read over his notes, but gave a full statement as to how he had ruled and decided, and not unfrequently there would be a strong difference of opinion expressed by the Counsel as to what had actually taken place. The notes having been read, Counsel were heard, and the various members of the Court gave their judgments.

The fusion of the old Courts of Common Law, together with recent legislation have altered this but in Lord Ellenborough's time it would have been unprecedented and highly inconvenient for the judge who tried a case to have absented himself from a discussion where his presence was required.

'Trial,'
p. 575.

Park and Richardson both addressed the Court in mitigation of punishment on behalf of De Berenger, and Serjeant Pell and Mr. Denman spoke on behalf of Holloway, Sandom, and Lyte.

Mr. Gurney then rose, and after a few preliminary remarks said :

p. 583.

It may however be fairly urged for all these three defendants, Sandom, Holloway and Lyte, that they did not aggravate their case at the trial, in the manner in which the other defendants aggravated theirs.

p. 584.

As to the defendant De Berenger, it appears that he was the hired and paid agent of Lord Cochrane, Mr. Cochrane Johnstone and Mr. Butt : and having received his wages he was attempting clandestinely to quit the country. If he had effected that purpose, he would have escaped punishment himself, and would probably have defeated justice with regards to the others. But, my Lords, his case has been greatly aggravated, as indeed have the cases of Lord Cochrane and Mr. Cochrane Johnstone, by attempts to defeat public justice, as absurd as they were wicked ; *for all the swearing before the trial, all the swearing at the trial, and all the swearing to-day, has proceeded on the presumption, that if men will have the hardihood to swear, there will be found those who will have the credulity to believe.*¹

Referring to the Tahourdin-De Berenger correspondence he said :

p. 584.

If the letters were written at a period subsequent to their dates, they were fabricated for the purpose of constituting an artificial defence. If they were written at the time they bear date, then they were equally fabricated for an artificial defence : and at the moment of committing the crime, the parties were providing the means of a false defence, in case they should be detected.

There was a flat contradiction between Mr. Tahourdin, and the letter Mr. Tahourdin produced : whether the evidence of the witness were true or the statement in the letter were true matters not : the contradiction independent of other circumstances shews the whole of this transaction was one premeditated scheme of fraud.

¹ The italics are mine.—ED.

Then he commented on the fact that his

learned friends who were of counsel for Lord Cochrane, whose ability, whose discretion and whose zeal, no man can question, did not venture to put to that servant (Dewman) a question as to the colour of De Berenger's coat, and that they did not venture to call the other two servants, one of whom at least was in attendance, while Lord Cochrane might easily have detained the other in England.

'Trial,'
p. 585.

Then he pointed out that Lord Cochrane's services had neither been forgotten nor unrewarded by his Sovereign or his country.

For all this, what return has he made?—he has engaged in a conspiracy to perpetrate a fraud, by producing an undue effect on the public funds of the country, of which funds he was an appointed guardian,¹ and to perpetrate that fraud by falsehood. He attempted to palm that falsehood upon that very Board of Government under the orders of which he was then fitting out, on an important public service, and still more as if to dishonour the profession of which he was a member, *he attempted to make a brother officer the organ of that falsehood.*²

p. 587.

Though little attention has been paid to this point, I have always myself considered that this, the fourth count in the indictment, was the most serious part of Lord Cochrane's offence, and one that should always be taken into consideration by those who blame the judges for the severity of the sentence. Here was an officer on actual service and full pay, in command of a line-of-battleship, utilising his leave of absence from his ship and his knowledge of nautical matters, to deceive his own Admiralty, with false war news in time of war for the purpose of a private speculation of his own.

See preface
p. 7.

And when one takes into consideration that the man whom he tried to make a fool of, to use as an instrument of his fraud, was no other than Admiral Sir Thomas Foley, who had commanded a line-of-battle ship at the battle of Cape St. Vincent, who had been Nelson's flag-captain at Copenhagen, and who had led the British fleet into action

¹ As a member of the House of Commons.

² The italics are mine.—ED.

at the battle of the Nile, I cannot consider Lord Cochrane's offence to have been a mere peccadillo.¹

'Trial,'
p. 599.

When Mr. Gurney had finished his speech the defendants were committed, and ordered to be brought up on the next day to receive the judgment of the Court.

Sir Simon Le Blanc, the senior puisne Judge, pronounced sentence on June 21. He recapitulated the evidence and said :

p. 598.

Though the Court could not consistently with its rules hear the application for a new trial made by my Lord Cochrane within the first four days of the term, yet still it was willing to afford the opportunity at any time to state circumstances which might operate on the mind of the Court to shew that the verdict had been improperly come to, and that the evidence did not justify it.

The Court has deliberated upon the case, and the Court cannot, in this instance, feel itself justified in measuring out justice to one by a different measure from that in which justice would be measured out to others.

Mr. Justice Le Blanc then pronounced the sentence of the Court, which was that Lord Cochrane and Mr. Butt should pay a fine to the King of £1,000 each, Holloway £500 ; all six defendants present in Court should be imprisoned in the King's Bench for twelve months, and that during that period Lord Cochrane, De Berenger, and Butt should be set in the pillory opposite the Stock Exchange in the City of London for one hour, and the defendants were to remain in prison until their fines were paid. In consequence of his absence no sentence was passed on Cochrane Johnstone.

This sentence has frequently been described as if it was Lord Ellenborough's sentence only, or as if he unduly influenced the Court.

But the following passage from the speech of Mr. Justice Bayley when passing sentence on Mr. Butt for libel in

¹ What would the Russians or the Japanese have done to one of their captains if he had sent in false news under similar circumstances during the late war ? The pillory is out of date, but if the captain of one of our ships in the Thames was to send false news to an admiral at Dover his fate would be unenviable.

June 1817, shows that it was the sentence of the whole Court of four Judges and not of one Judge only.

It appears that you, among others, were put upon your trial in this Court, and after having been convicted by a jury of your country of a particular offence. Of the nature of that offence I shall now say nothing further than this, that upon a very cool, careful and deliberate consideration of all the circumstances of the case, the Judges of the Court each formed his own opinion for himself, and thought that they could not consistently with the demands for justice pronounce a different judgment from that which in that instance they did pronounce. That was not the sentence of Lord Ellenborough, unconnected with the other judges of the Court, but on this occasion, as upon all other occasions of sentence, each judge has an equal voice with all the rest; and I will say this because I know it, that I know of no instance where the judges have been overborne by the opinion of any other judge.

' Trial of
Mr. Butt,'
p 15.

That Lord Ellenborough was not in the habit of inflicting the pillory lightly, or on his sole responsibility, is shown by the following extract from a speech of his in the House of Lords on July 5, 1815, when he had been twelve years Chief Justice :—

That he himself had never inflicted the punishment when alone on circuit, except in one instance, where he ordered two persons to be put in the pillory for having taken a bribe for assisting in the escape of French prisoners; an offence which the legislature soon after made felony punishable by transportation.

Hansard,
xxxi.
1125-6.

In the course of the same debate Lord Eldon said
there were offences with respect to which it would be unwise to abolish the punishment of the pillory, for instance, cases of perjury and fraud, or cheating and especially in cases of mixed fraud and perjury. Cases might arise where persons might attempt to defend themselves against a conviction for fraud of which they had been guilty, by perjury and subornation of perjury.

Now these were the very crimes Lord Cochrane had been guilty of.

Lord Cochrane's name was not mentioned in the debate, but his case was evidently in the minds of all the speakers.

The world has steadily advanced in many ways since 1814. The pillory, however, remained as a punishment for perjury and subornation of perjury until 1837, when it was very properly abolished. All are equal in the eyes of the law, and the Court of King's Bench could not take into consideration Lord Cochrane's distinguished services without rendering themselves liable to an accusation of judicial partiality. Clemency is a prerogative of the Crown, and it was very properly exercised in the case of Lord Cochrane, by the remission of the pillory portion of the sentence.

The Crown could take Lord Cochrane's services into consideration, the Court of King's Bench could not.

CHAPTER XIV

DEBATES IN PARLIAMENT, 1814

LORD COCHRANE'S conviction and sentence was followed almost immediately by his dismissal from the Navy, and deprivation of the Order of the Bath.

As both Lord Cochrane and Mr. Cochrane Johnstone were members of the House of Commons, it became necessary for that body to take some notice of the result of the trial. On June 24, Mr. Holmes made a motion for papers in connection with it. He was seconded by Mr. A. Browne, who appears to have been the first to start the erroneous idea that technical rules had prevented Lord Cochrane from being heard as to the reasons why he wished for a new trial.

Hansard,
xxviii. 50,
121.

p. 231.

The Attorney-General, Sir William Garrow, rose to reply. His speech is so clear and so much to the point that Mr. Atlay has reprinted the whole of it in the appendix to his book. Space prevents me from giving more than a few extracts.

p. 238.

If the noble Lord inveighed against his sentence he was one of a numerous class.

Atlay,
p. 517.

But the honourable gentleman had maintained that the individual in question had taken every possible means to obtain a re-hearing of his case but in vain ; because the practice of the Court was so fenced round by technical rules that all his efforts were rendered abortive. The direct contrary of all this was most unequivocally true. . . .

It was with great pleasure, however, he stated that no technical rule however wisely formed, or however long it might have been acted on, was permitted in a British court of justice to work injustice towards anyone. The court would find a season for

doing justice. It would make technical rules bend, when they stood in the way of substantial right. . . .

Let the House mark the sequel. The counsel for the defendants moved on a subsequent day for an arrest of judgment. If Butt had succeeded in this application, if judgment had been arrested with respect to him, it must have been arrested with respect to every one of those implicated with him in the same offence. . . .

What was the next proceeding ? The noble lord did precisely that which the technical rules of the Court had prevented him from doing on the preceding day. He read from a paper which was very ably written, and which evinced a profound knowledge of the law, a minute and scrupulous examination of the evidence. . . .

But the Court had heard from the noble lord all that could have been possibly addressed in his favour. The paper which he read in Court was drawn up by no mean hand, and had evidently the finish of a master.

Mr. Horner for somewhat different reasons opposed the motion, and Mr. Wynn said :

June 24,
1814, Mr.
Wynn's
speech.

Had anything been said against the justice of the Court, or had any unfairness on the part of the judge from whatever cause, whether of a political nature or otherwise been alleged, he should feel it a case where the House might with propriety enquire into the proceedings of the court of law, but in this case no adequate grounds had been stated to induce the House to go into the enquiry.

Hansard,
xxxiii. 138.

The motion was negatived. On July 5 the Cochrane case came up again. M'Rae, who was supposed to be abroad, presented a petition, saying that he was fully competent to unveil the whole mystery and to exculpate Lord Cochrane, but that the Stock Exchange Committee hearing this, included him in the indictment to prevent his giving evidence at the trial, and that, conscious of their iniquity, they paid all his legal expenses. He wished to be examined at the bar of the House.

See second
report of
the Stock
Exchange
Committee.

The House refused to receive his petition. He had already offered to tell all he knew for £10,000, he was turning informer at too late an hour, and his conviction disqualified

him from giving evidence in a Court of law. He was afterwards arrested and sentenced to twelve months' imprisonment, and I have never been able to find that he ever disclosed anything.

The Speaker called upon Lord Cochrane and Mr. Cochrane Johnstone. The latter had been seen at Calais three days previously and had not returned.

Lord Cochrane rose and *read his speech from a written paper* which might be of interest to philologists.

I am sorry that I have been unable to obtain a full report of this speech, for as the strong expressions he made use of in mentioning the Judge caused a murmur in the House, the Speaker intervened, cautioned the reporters, and told Lord Cochrane that the House 'could not suffer virulent invectives or words to be made use of by him which were not fit to be heard if not proved.'

A contemporary pamphleteer has described this speech as containing 'the coarsest and grossest terms that language can supply,' and the asterisks in the next few paragraphs are Hansard's, not mine. I have no doubt that it was a fine specimen of Regency and quarter-deck oratory—sulphurous and briny.

Having applied plenty of asterisks to the Judge, he next attacked the jury as follows:—

Have I been tried by a jury of my country? * * * Sir, I have been tried by twelve men * * * * * If there be any meaning in the word *packed* as applied to juries; * * * * * To pack a jury means to select, by one of the parties, men, who, it is known will decide, as that party wishes them to decide. And was not that the case in the present instance? Was not the master of the Crown office * * * * * For what other purpose than that of securing * * * * * was the case removed from the Old Bailey to the Court of King's Bench? I ask for what *other* purpose? and I defy anyone to answer me, unless he add that it was also for the purpose of securing * * * * *.

I shall satisfy myself as to this point, in having shewn that the jury, whose verdict was produced in the House * * * * * and that it was as juries in such cases are * * * * *.

'Remarks on the case of Lord Cochrane.'

House of Commons, July 5, 1814.

And again he spoke thus of the Judge :

Throughout the whole of this and indeed every part of the charge, a charge which was never surpassed by * * * * * it is obvious Sir, that Lord Ellenborough loses sight of the evidence and speaks entirely from his own * * * * *.

I have given the above extracts as specimens of the manner in which this speech was delivered.

I now come to the definite charges he made against various persons, many of which have been frequently repeated.

He began by swearing that he was innocent : he complained bitterly of the conspiracy of the Committee of the Stock Exchange, and of having been tried by a special jury instead of a common one.

He said he believed that De Berenger could not have been Du Bourg, because the Committee of the Stock Exchange had in a handbill on March 7 described Du Bourg as wearing a brown coat and a red uniform, whereas De Berenger wore a grey coat and a green uniform, and that Mr. Johnstone had told him that De Berenger informed him he could

prove an alibi, by at least a dozen credible witnesses and believing that at all events my own innocence would prove my protection. I felt so perfectly secure as to the issue of the trial that I gave no instructions to counsel, attended no consultation, and never even read my own brief into which a serious error was introduced ; but leaving the whole business in the hands of my solicitor, I retired to my house in the country, and did not return till two days previous to the trial.

On my return to town immediately before the trial, a copy of the brief of Mr. De Berenger was shewn to me by Mr. Johnstone and the case as therein stated appeared to me so perfectly clear, that I solemnly assure the House that I then thought it impossible that he could have been the man who personated Du Bourg.

He inveighed against his solicitors ; showed that on June 9 he had complained that Mr. Parkinson had put his foot in his case—had botch'd his case by not calling Mary Turpin, and he read an extract from the daily papers to

Compare
this with
*Law Maga-
zine*, xi. 192
et seq.

show that William Crane, driver of hackney coach 782, had lately been found guilty of atrocious cruelty to his horses. (The William Crane of the trial drove No. 890. They may or may not have been the same, see 'Trial.') Atlay,
p. 93.

Then he dwelt on the recovery of his own memory and that of Mr. Butt's, as to the payment of the second £200 to Mr. Butt. He had forgotten a wine merchant's bill for £699 11s. which Mr. Butt has paid for him.

He poured vials of wrath upon Lord Ellenborough for *having adjourned* the Court at so late an hour. He generally misrepresented the evidence, and told the House that if he had chosen he could easily have smuggled De Berenger on board the *Tonnant*.

But I must point out that though he no doubt could have attempted to do so, it would have been an exceedingly dangerous game to play. The *Tonnant* did not sail until six weeks after the fraud. De Berenger's presence on board would have soon been known and talked about, and from what we know of him he was not at all the sort of man to be kept hidden in a cask, or one likely to refrain from dangerous conversation.

Lord Cochrane then went on to say :

On my second attempt to obtain a new trial *I was indeed permitted to speak* and I have reason to believe that the statement I then made has convinced many persons in Court, and since then many persons out of Court of my entire innocence. Hansard,
xxxiii. 571.

He then read the affidavits placed before the Court on June 20, and those of his servants sworn on June 14. They were much the same as their former affidavits, but Dewman added to his the mention of a portmanteau big enough to hold a change of clothes. Sarah Busk, who had left Lord Cochrane's service on the 21st, said : 'the neck of the under coat or such part as she could see was a dark green and he had also with him a military cap.' Mary Turpin said : 'he wore a grey great coat buttoned up with a dark green collar or facing under it,' and that he had a small portmanteau.

The affidavit of the housekeeper was to the effect that xxviii. 576.

she had not seen De Berenger. She had only seen his cap in the parlour.

These affidavits were obviously prepared to meet the observations in Gurney's reply and the Lord Chief Justice's summing-up, and there is evidently some wisdom in the rule by which they were refused a reading in Court.

In conclusion Lord Cochrane made a most impassioned appeal :—

I solemnly declare that before Almighty God that I am ignorant of the whole transaction and uniformly I have heard Mr. Cochrane Johnstone deny it also. He entreated the strictest scrutiny and a patient hearing.

From the accounts that have reached me of this speech, I can only conclude that Lord Cochrane was a most consummate actor, with his emotions thoroughly at his command, and that the following sentence in Gurney's speech on June 20 had sunk deeply into his mind :—

' That if men have the hardihood to swear there will always be found those who have the credulity to believe.'

This oration must be looked upon as one addressed more to the illiterate portion of the electorate of Westminster than to the House of Commons.

After Lord Cochrane had withdrawn, Mr. Browne moved an amendment to the effect that Lord Cochrane's statements and affidavits should be referred to a Select Committee.

The Attorney-General opposed it. He stated with reference to the new trial :

Hansard,
xxxiii. 579.

That rule did not stand in the way of the noble lord ; for whatever he had thought necessary to state to the court had been heard to its fullest extent, and it was the unanimous opinion of the judges that there was no occasion for further proceedings.

And as for the formation of the Jury, he said the master of the Crown Office was in fact always one of the most respectable men in the profession, he was not appointed by political favour but by his court ; he held his office during good behaviour, which was the same tenure as that of the Chief Justice. What would those members of the House who served on special juries at the assizes say if they were accused of being packed ? Yet they

were packed quite as much as the jury which tried the noble lord. The master of the Crown office merely turned over the leaves of the book which was given to him by the sheriff, and in the presence of the agents of both parties selected 48 names. Each party strikes off one till the number is reduced to 24: these 24 are to appear at the trial, and no one knows which 12 will be selected as it depends solely on the presence or absence of the jurymen. It was the same in criminal cases—

The Chief Justice never saw this book of freeholders; the master never saw it till the time of the trial, when the sheriff gave it him; and he believed it would be difficult to shew that the sheriffs of London of late years had been disposed to pack juries from subserviency to the Crown.

It was not left to the agents to reduce the list, but Mr. Cochrane Johnstone had himself attended, when the list was reduced from 48 to 24.

Mr. Brand supported the amendment on the ground that Lord Cochrane had said he would prove how the notes reached De Berenger, and that five persons would prove De Berenger's dress to be as stated in his affidavit of March 11.

Mr. Croker declared that no communication whatever, either direct or indirect, had taken place between Lord Melville and the Lord Chief Justice as regards Lord Cochrane's suspension from the command of his ship.

Hansard.
xxviii. 590.

Mr. Ponsonby supported the amendment.

Lord Castlereagh remarked :

As to the phrase respecting the appearance of De Berenger before the noble lord in the costume of his crime, it seemed rather extraordinary that this circumstance was this night brought forward for the first time. This alleged misdirection of the judge was certainly never mentioned by the noble lord either upon his motion for a new trial or in his affidavits when brought up for judgment.

Mr. Whitbread and *Mr. Stuart-Wortley* supported the amendment.

Mr. Bathurst remarked :

The noble lord in the statement which had been deliberately prepared had urged nothing which might not be urged by any

person convicted of a serious offence. The noble lord had published his innocence ; so had his relation who had absconded. *Many individuals whose guilt was proved beyond the shadow of doubt, had gone out of the world protesting their innocence.* The noble lord might have a motive for asserting that which was not true. His motive for making his statement was to hold himself up in the eyes of his constituents.

The noble lord had said, that a systematic plan had been formed, by his political opponents, to effect his expulsion and ruin. He might have learnt from his friend and relation whose advice had been quoted, and who had told him what he said was never attended to, that he was not of such importance in the House as to make any party care for his absence or presence.

Sir F. Burdett supported the amendment, and inveighed against the pillory as a punishment never intended in this country for persons of Lord Cochrane's station.

Some speakers declared that Lord Cochrane's speech had convinced them of his innocence, others declared that there was at any rate ground for a new enquiry, but not one voice was raised in support or sympathy with the foul aspersions cast upon Lord Ellenborough.

On the motion for expulsion, the House divided 140 for and 44 against.

Lord Cochrane afterwards published the list of the minority. I have endeavoured to obtain that of the majority, but I find that unfortunately it was not then customary to record their names.

I have given but a short account of the speeches in Lord Cochrane's favour, because Lord Brougham has summed them up so concisely in the following words :—

'Life and
Times of
Lord Brougham,'
ii. 238.
Italics in
original.

One word on Westminster before I conclude. They begin to throw the blame on George Ponsonby and Whitbread who, without having seen the evidence and ignorant of the whole subject, had the incredible folly to blame the Counsel for not calling the witnesses. The history of presumption offers no greater instance. We had *too* good reasons for not calling them, and were I to-morrow to conduct it, I should after the benefit of their advice, still refuse to call any of them, and so would all the profession.

Lord Cochrane's speech had such an effect on the emotional and illiterate portion of the voters of Westminster that he was brought forward for that constituency. Here he was singularly lucky, for the candidate who would otherwise have walked over the course was his own counsel Brougham, who therefore could not possibly speak in opposition to him. Brougham, as we have seen, at once withdrew in his favour, and some of the electors appear to have bethought themselves of Sheridan. But Sheridan was then past his prime, and no one who had ever been a friend of the Prince Regent's would at that time have had the slightest chance at Westminster.

And on July 12 Brougham had written as follows to Lord Grey :—

Temple, *July 12, 1814.*

DEAR LORD GREY,

You will before this time have seen the event of the Westminster election—at least what is sure to be so—the return of Lord Cochrane without opposition.

'Life and Times of Lord Brougham,' ii. 105.

Everything was arranged on Tuesday last, and I should have walked over the course. Lord Cochrane had never been mentioned; but the debate especially George Ponsonby's and Whitbread's and Wortley's speeches preferring his assertions of innocence to the verdict of guilty—had the immediate effect of putting it to the Westminster men to condemn him and they all said 'Though we want to get rid of him as a member yet it is now cast upon us to declare him guilty and upon evidence which forty-four of the House of Commons deem insufficient.' This has proved decisive; and though many of them wished a middle course that he should be *declared* innocent and not elected, I among others told him *that* was not the way to serve Lord Cochrane.

It is understood that an arrangement has been made to choose him this one time, and that he is not to come forward again in case of expulsion etc. The great thing was to keep all together and avoid a splitting. In this they seem to have succeeded perfectly.

Burdett's declining influence has been somewhat revived by this; but I fear that the extreme folly of attacking Lord Cochrane's attorneys, etc., will lead to such a defence on their

part as will damage both Lord Cochrane and Burdett. I fairly warned them of the danger. Lord Cochrane partly listened, Burdett would not.

Lord Tavistock and his brothers, with many others, had most warmly come forward for me, and it stands as well as possible on the whole.

Yours truly,

H. B.

The 'Autobiography of a Seaman' curiously enough omits all mention of Brougham's candidature, and only refers to the far less serious pretensions of Sheridan, yet Lord Cochrane knew all about it, and in 1818 in a debate in the House taunted Brougham for having been a candidate for Westminster.

Brougham answered him as follows :—

Hansard,
xxxv. 370.

He however was one of those who tendered their tribute of applause to the electors of Westminster for the motives of their conduct generally in defeating the Government influence, and more especially for their humane and manly behaviour in the last election of the noble lord after his expulsion from that House.

He confined himself however, entirely to the motive which he believed influenced them in that proceeding, and which was their resentment at the infamous sentence, including the punishment of the pillory, which the Court of King's Bench had passed upon him, and but for which sentence the noble lord would not have been re-elected.

At a meeting in Palace Yard on July 11, the high bailiff declined to read a full and un mutilated account of the defence made by Lord Cochrane in the House of Commons.

Atlay,
p. 215.
Meeting on
July 11.

Sir Francis Burdett then addressed the meeting. He disregarded the facts of the trial and made a fine rhetorical display. He said that Lord Castlereagh had prevented the people from reading Lord Cochrane's defence, whereas it was the Speaker who first cautioned the reporters. He accepted all Lord Cochrane's statements, and said :

He would not now find fault with the jury that tried Lord Cochrane (who were as he was informed very respectable persons) ; but he would find fault with that mode of picking out

the jury which Lord Cochrane had called packing them. *He did not mean to find fault with the verdict which they found upon the evidence that was laid before them*—evidence that was so skilfully and so artfully got up against him by those who had the arrangements of the prosecutor's case, and which had been so feebly met by those who undertook the defence of Lord Cochrane.

Atlay,
p. 215.

He repeated the new trial story regardless of its exposure by Sir William Garrow, and said that Lord Cochrane's real crime was his bold and independent conduct.

Alderman Wood told the meeting—

He had heard from one of the jury that had the evidence since produced been brought forward at the trial, or had Lord Cochrane been in Court and made his own defence, it would have been impossible to have found him guilty. If necessary he could bring the individual alluded to before them.

Times,
July 12,
1814.
Atlay,
p. 216.

At another meeting on July 16 Mr. Alderman Wood again referred to this jurymen, some of the newspapers having commented on the subject. But this jurymen's name still remains unknown, and an anonymous jurymen is still, and will probably always continue to be, an important part of the stock-in-trade of any one who is dissatisfied with a verdict. The curious point is that this same jurymen does not appear to have complained of fatigue. However, he was good enough for a Westminster political audience of that period, and Lord Cochrane was re-elected for Westminster on July 16.

On the 19th a fresh debate took place on Lord Ebrington's motion that the pillory portion of Lord Cochrane's sentence should be remitted. On July 5 the House of Commons had only the newspaper reports of the trial before them. But in the interval, however, between the 5th and the 19th, the shorthand notes of the trial had been printed so that the speakers had had an opportunity of making themselves better acquainted with the details of the case, and the effect of this is shown in the course of the debate. Lord Cochrane's attack on his attorneys had also caused them to move in their defence.

Hansard,
xxviii. 761.

Lord Ebrington began by reading a letter from Lord Cochrane, strongly protesting against the motion as having

a tendency to bring down on me a greater indignity than any that has been offered me by my enemies.

Nor can I, for a moment consent that any past services of mine should be prostituted to the purpose of protecting me from any part of the vengeance of those laws against which I if at all, have grossly offended.

Italics in
original.

If I am guilty, I richly merit the whole of the sentence that has been passed upon me ; if innocent one penalty can not be inflicted with more justice than another.

Lord Ebrington and his seconder, Lord Nugent, touched on Lord Cochrane's services, and undoubtedly made out a good case for remission. Mr. Wynn referred to the case of a captain in the Navy who had been sentenced to the pillory for fraud (in 1803), but had been 'absolved from that ignominious punishment on account of his services.' Several other members spoke, and Lord Castlereagh told the House that he could not admit the doctrine which went to establish privileged orders, as it were, in the country, with regard to the punishment for crimes, upon a principle of aristocracy most dangerous and unwise. And he went on to say:— 'That the Crown had taken steps to interpose its mercy with respect to the infamous part of the punishment not only as far as it related to Lord Cochrane, but to all the other parties.'

As many of the speeches, however, referred to the facts of the case, I shall quote from some of them.

Mr. Serjeant Shepherd, Solicitor-General, said that Lord Cochrane had accused his counsel of neglecting his case.

Now he (Mr. Shepherd) could not, he confessed forbear expressing his surprise at this extraordinary charge, particularly when he looked at the names of the counsel who acted for the noble lord, whom he knew to be some of the most able and eminent in the profession ; and among them was one, at least it was impossible to suspect of any relaxation of effort from the influence of party spirit, against the noble lord (probably alluding to Mr. Brougham).

He never could persuade himself to invade professional confidence. But this without any invasion he could state as a

positive fact, that all the instructions upon which the brief was drawn up, were received from Lord Cochrane himself ; and that the brief after it was drawn up, together with the statements of the witnesses by which it was proposed to sustain it were read over by the noble lord by whose suggestion a correction was made in it.

Yet this noble lord, in the Court of King's Bench, but especially in that House had spoken in a high tone of confidence, that he had given no instructions to his lawyers, that he had never read his brief—nay that he had been totally careless about the conduct of his defence, so much, indeed, did he rely on the consciousness of innocence.

And on the question of a new trial as a reason for refusing it he said :

The accused might intentionally withhold testimony on his trial with a view to make an experiment as to the evidence for the prosecution ; and then if he failed he might come forward and try his hand again.

Sir Francis Burdett, Lord Cochrane's Westminster colleague, declared that Lord Cochrane's counsel did not defend him with that ability they might have exerted.

Hansard,
xxviii. 732.

He did not positively know that the noble lord had read the brief, but he could believe the fact might be so, and yet that he was ignorant of its contents. He who knew the noble lord well, had no doubt that at the time he was reading the brief, his head was dreaming or scheming over the plans which withdrew his attention from the subject.

He wished to know if any alteration had been made in the Judge's charge and to examine the shorthand writer at the bar. *The Attorney-General* (*Sir William Garrow*) defended the Solicitor-General's speech, and added :

The honourable baronet professed to dwell upon the newspaper accounts of the trial ; but now there was an account of it published, not given in the hurry of the moment when it occurred, but taken by a person known for the fidelity and accuracy of his labours. In that account an important alteration appears in the charge of the judge. He did not know that it had been submitted to the judge for his revision, but he dared to say it was, as the practice was a common one for the sake of obtaining the greatest possible accuracy.

The Judge might alter a phrase or a word to make that correct which before was not so, but if the Hon. baronet meant to state that the noble lord wickedly altered any portion with the intent of giving a different and new meaning to what he said, or to soften down any part of it, he would venture to assert, not only from his own knowledge of that learned lord, but of all who sat on the bench, that there was not one of them who would descend to such a practice.

It was well known that in all conspiracies each individual conspirator had his part assigned to him.

Lord Cochrane could not take an active part ; he was too well known to go about it. His person would have been recognised. He (the Attorney-General) had not heard the whole of the evidence at the trial, but he had attended to every tittle as read over by Sir Simon Le Blanc, and he could lay his hand on his heart and express his firm conviction that when the existing prejudices against the constituted authorities had subsided, the grand jury, the petty jury, the judge who recapitulated the evidence, and the four judges, who refused to grant a new trial and who thought the crime deserving of an infamous punishment would all be considered as having done their duty.

At the same time he was pleased to find that a portion of the sentence was to be remitted. Mr. Holmes said he had just received a letter from Lord Cochrane which he read to the House. It asserted he had 'never read the briefs, although a part of them had been read by Mr. Parkinson, a person connected with his solicitors. The noble lord had also sent the brief, part of which was marked, and in the margin were the words 'Read this to Lord Cochrane.' This memorandum, the hon. gentleman remarked, was confirmatory of the noble lord's statement.

The Solicitor-General said :

He did not actually state that Lord Cochrane had seen and read the briefs before they had been delivered to Counsel ; but what he said was that instructions had been taken from Lord Cochrane for the briefs, which were read in his presence and approved of by his lordship : and that saving the indictment the whole of the briefs had been prepared under his immediate inspection.

He had further stated on the authority to which he had

See also
*Law
Magazine*
xi.

See *Law
Magazine*,
xi. *et infra*,
p. 193.
Supra, p. 85.
Infra, p.
350.

alluded that the evidence of Lord Cochrane's servants, as taken down by the attorney's clerk was read over to him that he made an alteration in the evidence of Thomas Dewman. Thomas Dewman who had confounded the arrival of De Berenger at his master's house on the 21st with another officer who had called on some previous day—and with that correction the brief was sent to be engrossed, and was afterwards sent to counsel.

He begged to notice one part of the draft in which the words 'read to Lord Cochrane' were inscribed in the margin. This was a part in which three or four lines were erased.¹ This no doubt, had been done by his lordship. What those lines contained could not be known, although it was evident, from this circumstance, the noble lord had not been inattentive to the text which was submitted to his judgment.

Mr. Abercromby said that :

Lord Cochrane's counsel, apprehending that Lord Cochrane would allege neglect on their part and more particularly with respect to the brief, had furnished him with a statement of facts which to the best of his recollection were as follows ; a brief, the House would observe, was divided into two parts the statement or recital, and the proofs, or the evidence it was expected to obtain in support of the statement. Now according to his recollection of the facts to which he had alluded, the first part of the brief (the recital) had been read over to Lord Cochrane at one period, and the second part (the proofs) at another period, and on the last, Lord Cochrane made some observations which were strictly attended to:

Hansard,
xxviii. 790.

Mr. Wetherell had witnessed the statement of Lord Cochrane's counsel, to which his hon. and learned friend had just adverted and entirely coincided with him in his recollection of the facts.

¹ Was this Mary Turpin's statement that De Berenger's coat was red ? See *infra*, p. 305.

CHAPTER XV

QUARREL WITH SOLICITORS

ON July 25 Lord Cochrane wrote to Messrs. Farrer, saying that in consequence of what had passed in the House of Commons he felt it his duty to call on them for an answer to the questions which he enclosed. They are thirty-four in number, and will be found in the Appendices attached to the 'Letter to Lord Ellenborough' and in the second volume of the 'Autobiography of a Seaman.' The latter work also contains Messrs. Farrer's answer, which was to the effect that they declined to answer any more questions. They concluded by saying :

'We have agreeably to your Uncle's desire, made out, and now beg leave to enclose you our bill on that business, in which you will find most of the facts to which your questions relate stated as they occurred.'

Now Lord Cochrane never dared to publish this bill of costs himself, though he would undoubtedly have done so if by so doing he could have proved the carelessness of his solicitors. Yet on August 10, while renewing his attack on his solicitors, and ignoring most of their explanation, he wrote to the electors of Westminster :—'I freely release my solicitors and counsel from every obligation of secrecy.'

Still, they did not publish it either, and I can only conclude that Lord Cochrane knew that there were some items in the bill that they could not publish, possibly because they affected a third person. From the historical point of view it would be very desirable that this bill of costs should be published in its entirety. Both sides have favoured the public with extracts from it. Some of them I have already referred to, but none of them, whether originally

in the 'Letter to Lord Ellenborough' or in the *Law Magazine* in 1860 or 1861, corroborate either Lord Cochrane's statements, or his accusations of negligence.

Besides the extracts to which I have referred, the *Law Magazine* printed the statement prepared by Messrs. Farrer in answer to Lord Cochrane's attack on them in the House of Commons. I have reprinted at the end of this book the whole of the second article which appeared in the *Law Magazine*.

Those who would reject its testimony must perforce believe that a representative of Messrs. Farrer endeavoured to influence the reviewer of the *Law Magazine* in 1861 by means of forged documents, an idea which I only mention for the purpose of rejecting.

There is absolute contradiction between Lord Cochrane's version of his attitude towards his defence and that of Messrs. Farrer. As the solicitors had before them Lord Cochrane's letter, dated June 7, the day before the trial, 'desiring that Mary Turpin's statement that De Berenger's coat was red should be expunged from the brief,' it would have been madness to have called such a witness for the purpose of proving the coat to be green.

While quarrelling with his solicitors, Lord Cochrane set to work to procure affidavits impugning the character and the evidence of the witness Crane. The 'Autobiography' styles the makers of these seven affidavits as respectable tradesmen. Of these affidavit makers, Miller and Rayment swore that they saw the supposed messenger get out from a chaise into a hackney coach. Miller said that he was dressed in green with a grey great coat, and that he saw no red on any part of his dress. Rayment only went so far as to say that the coat underneath appeared to be a dark green.

The other five were by people who gave Crane a most villainous character. King and Baldwin declared that he had told them that he would swear black was white if he was well paid for it. Critchfield declared that Crane had bought a new hackney coach since the trial; while Yeowell and Lovemore swore that Crane had told them that he

See Brougham's letter, ante, p. 54.

Atlay, p. 162 n.

had told the Stock Exchange Committee that the person he had taken from the post-chaise and four was no other than Lord Cochrane himself. These affidavits are printed in full in the appendix to the 'Letter to Lord Ellenborough,' with which I am about to deal.

On this evidence, and on that of his servants, Lord Cochrane would, if innocent, have indicted Crane for perjury, instead of merely pelting him with affidavits. To have done so would have been to remedy the alleged mistake of his solicitors and counsel at the trial: would have enabled him to put his four servants—Dewman, Davis, Turpin, Busk and his seven affidavit makers—into the witness-box to be tested by cross-examination, and, if not allowed to enter the box himself, he could have made great capital out of the prohibition.

This would have been a near approach to a new trial, and his non-prosecution of Crane was a practical acquiescence in the decision of his counsel, that it would be unwise to call his servants as witnesses. This non-prosecution of Crane no doubt tended towards establishing the state of public opinion which caused the extraordinary division of 89 to 0, in the House of Commons, on April 30, 1816.

As long as he failed to get a new trial, he could get some people to believe him, but he well knew that any real investigation would cause the loss of those friends who still adhered to him.

The object of these attacks on Crane were for the purpose of misleading the public into believing that the sole evidence of De Berenger's dress was that of Crane. And as long as he was not tried, it might be possible so to delude them.

But whether De Berenger wore a red coat or not, it would still have been proved that Lord Cochrane had given him a disguise, and that he had afterwards provided him with money with which to leave the country.

Lord Cochrane employed the first few months of his detention in preparing a vindication of his innocence, and a series of attacks on the Chief Justice, which took the form of a pamphlet of 177 pages, including appendices, styled 'A Letter to Lord Ellenborough by Lord Cochrane.'

William Jackson, Lord Cochrane's secretary, whom I have already mentioned and shall have occasion to mention again, claims the authorship of this pamphlet. At least he told the Commissioner sent to examine him by the Lords Committee that while Lord Cochrane was in the King's Bench he wrote a pamphlet which he considered conclusively established Lord Cochrane's innocence, and I have been unable to find any trace of any other pamphlet of this description.

William Jackson's evidence, Lords Committee for Privileges, p. 22.

The letter is full of complaints of the Chief Justice's conduct, but Lord Cochrane abandons the charge against him of having falsified the revised edition of his summing-up, and contents himself with asserting that even in Gurney's report it is objectionable and not warranted by the evidence.¹

On this point it may be observed that in 1814 Lord Ellenborough had been on the Bench for twelve years, and had been in the habit of taking notes of evidence nearly every working day during that period. No notes can be infallible, but taking into consideration the practice and training of the Chief Justice, I do not think it follows that, in cases of slight difference between the notes of the evidence and those published in the report, Lord Ellenborough should always be the one at fault.

Atlay p. 22

And in one instance at least there exists the clearest proof to the contrary, for at Davidson's trial Mr. Gurney swore that the evidence of Davidson as given in the report taken from his shorthand notes was correct, 'excepting that the word "finally" had been accidentally omitted.' Now, in Lord Ellenborough's summing-up of Davidson's evidence he says: 'he quitted my house finally on the 27th of February.'

Times,
July 22,
1816

A great portion of Lord Cochrane's 'Letter to Lord Ellenborough' is devoted to the colour of the uniform worn by De Berenger on his visit to Green Street. The writer declares in favour of the change having been effected in the post-chaise during the last stage, and probably between the coach-stand at the Three Stags, Lambeth Road, and

¹ The Gurney referred to was the shorthand reporter, not the counsel of that name.

' Trial,'
p. 121.

at the Marsh Gate (p. 11). Now the distance was only a few hundred yards, and in the evidence of Barwick we find : ' I observed a post-chaise with four horses ; it had galloped at a very great rate ; the horses were exceedingly hot.' A post-chaise drawn by four horses, swaying along over a jolting road, was not a favourable situation for a man to effect a rapid change whose hands were probably numbed with cold.

But at p. 73, Lord Cochrane himself shows the difficulty of effecting this change in a short time :—

And certainly, there were so many things to do before a change of coats could be completely made, that it would unquestionably be a work of time. De Berenger would have had to take off his grey great coat to open his portmanteau, to take out his green coat, to take off his scarlet coat, to put on his green coat, and his grey great coat, to replace his scarlet coat in the portmanteau, and strap it up before the operation could be fully effected.

Lord Ellenborough is charged with suppressing evidence in favour of the change having been effected as above mentioned, and with assuming beyond all doubt that De Berenger appeared before Lord Cochrane in the full panoply of Du Bourg.

April 1861,
vol. cix.

Now, it is little short of monstrous to impute partiality to Lord Ellenborough, because he put to the jury and proceeded to comment on the very case which had been presented to them for the defence by Serjeant Best. The *Quarterly Review* put this clearly :

In regard to the specific issue of fact upon the colour of the uniform, and the inferences to be drawn from that colour, Lord Ellenborough could not consistently with his duty have charged less forcibly or clearly than he did after the course taken by Serjeant Best. The gauntlet had been thrown down upon one particular issue as the crux of the case against Lord Cochrane. The defending counsels with the fullest knowledge and in the exercise of the most deliberate discretion had refused to join issue thereupon, and virtually admitted the statement of the prosecution with all the consequences it might logically involve, there

was no course open to the judge but to take what was so admitted against the interest of the defence as a matter incapable of disproof.

While on the subject of the dress, it is worth while observing that the coat worn by De Berenger in Green Street is now asserted by Lord Cochrane not to have been part of the uniform of the Duke of Cumberland's sharpshooters.

I had no distinct idea whether the coat and cap were really the uniform of Lord Yarmouth's corps or not; but when he told me that he could not with propriety wait on Lord Yarmouth in that dress, I naturally conceived that, as he had prepared himself to go on board to exercise the sharpshooters, and came to see me for that purpose, it might be a dress made for the occasion.

'Letter to
Lord Ellen-
borough,'
p. 75.

Lord Cochrane then proceeds to give an explanation as to how the second sum of £200 derived from his cheque of £470 had got into the hands of Mr. Butt, from whom it eventually reached De Berenger.

It was not until very shortly before the trial that I had the cast intimation or idea that the produce of that note had also been traced to De Berenger, *and it was not even attempted to be accounted for at the trial*, because it was not till after my arrival at this place (King's Bench prison, where he was committed on June 20) that I could call to mind in what manner that note had passed into the hands of Mr. Butt. I am indebted to my uncle, the Hon. Basil Cochrane, for urging my recollection on this subject, and particularly putting the question whether I had not at any period subsequent to the 19th February deposited in Mr. Butt's hands any money for the payment of my shop-bills. And I was then struck as by electricity with the recollection of the fact of having paid into his hands a thousand pound note and a *two hundred pound note* for that express purpose.

pp. 114-15.

Then he brings documents to show that Mr. Butt on March 8 paid nearly £700 for wine shipped on board the *Tonnant*. I can scarcely believe that both Lord Cochrane and Mr. Butt lost all recollection as to a payment of £1200 at a time when it was most important they should recollect it, and then remembered all about it after sentence had

App. vi. of
'Letter to
Lord Ellen-
borough.'

been passed, and when there was no likelihood of their statements being subjected to cross-examination.

Atlay,
p. 223.

This statement, however, not only shews Lord Ellenborough as abstaining from comment on a part of the case where it might well have been expected, but liberates Lord Cochrane's advisers from suspicion of negligence or carelessness regarding it, while it shews over what very thin ice Serjeant Best had to proceed in his address to the jury.

With regard to the attacks on the Chief Justice for his conduct in reference to the adjournment, and for what Lord Cochrane calls his frivolous and pretended reasons for dividing the cause between the evidence and the defence, I have already dealt.

Campbell's
'Lives of
the Chief
Justices,'
3rd edition,
iv. 303.

The 'Letter to Lord Ellenborough' concludes with an attack on my grandmother, Ann Lady Ellenborough, whom it accuses of smuggling contraband goods. This story is repeated by Lord Campbell. My father, the Hon. H. S. Law, told me that there was no truth in it. Now that I have traced its origin to Lord Cochrane I do not think that it requires any further refutation.

While the 'Letter to Lord Ellenborough' was passing through the press, the Stock Exchange sub-committee had printed for the use of its members a further report dated January 27, 1815. They stated that—

Notwithstanding the clearness and weight of evidence adduced at the trial, the public press subsequently teemed with various falsehoods and misrepresentations artfully contrived for the purposes of rescuing some of the convicted parties from the disgrace which they had thus brought upon themselves.

They said that Crane was the first person examined by them, and that at his first examination (prior to its having been ascertained that Lord Cochrane resided in Green Street) he said that Du Bourg wore a red coat under his great coat when he left the coach and entered the house. Crane never gave them any reason to believe that the person he took from the Marsh Gate to Green Street was Lord Cochrane. The sub-committee also said that Crane was not paid higher than the other witnesses in his station

in life, and that the whole sum paid to him did not exceed £17, which included some expenses that he had incurred, and the hire of his coach for part of the time he was in attendance.

They went on to say that Shilling the post-boy had told them that Du Bourg wore a red coat, without having had any communication with Crane, before it had been ascertained that Lord Cochrane resided in Green Street.

They also said that none of the reward offered for the apprehension of Du Bourg had been paid to any witness at the trial, but that the whole of the 250 guineas had been given to a gentleman who, as well as some other gentlemen, had pointed him out to the sub-committee *five days previous* to the publication of Lord Cochrane's affidavit of March 11, and *that a warrant had actually been obtained against De Berenger.*

They characterised M'Rae's statements as gross and infamous falsehoods, and concluded by saying that they had never authorised or sanctioned the publication of any of their proceedings except the former and present report.

The 11th Earl of Dundonald tells us that

during the first period of his imprisonment Lord Cochrane was not treated with more than usual severity. Two rooms in the King's Bench State Prison were provided for him, in which of course all the expenses of his maintenance devolved upon himself. He was led to understand that if he chose to ask for it, he might have the privilege of 'the rules' which would have allowed him, on certain conditions, a range of about half-a-mile round the prison. But he did not choose to ask.

'Life of Lord Cochrane,' i. 49

He was apparently allowed to receive as many visitors as he chose. Sir Francis Burdett and Mr. Cobbett came to him to talk politics. His uncle, the Hon. Basil Cochrane, came to see him, and his secretary, Mr. Jackson, says he saw him almost daily, having taken lodgings near the prison.

Committee for Privileges, Evidence, p. 6.

But on March 6 he chose to escape; and on the 20th he was recaptured in the House of Commons after a short struggle. As he would not walk, he was carried out of the House on men's shoulders.

For the sake of greater security he was then confined in

'Lord Cochrane's

Trial for
Escape,
published
by Hone,
p. 23.
Infra,
p. 195.

a strong room. He complained most bitterly of his treatment by the Marshal of the King's Bench (Mr. Jones) after recapture. When he was tried at Guildford on August 17, 1815, for having made his escape, he took the opportunity of repeating these charges, but refused to call witnesses to support his statements, though challenged to do so, and thus gave no opportunity for a refutation of his assertions. They would, of course, have been cross-examined, and of cross-examination in any form he had a holy horror ever since he had been cross-examined at the trial of Lord Gambier.

CHAPTER XVI

THE NOBLE STOCKJOBBER

EARLY in 1816 De Berenger published a book entitled 'The Noble Stockjobber,' a book which it is impossible either to ignore or to rely upon.

The book is disfigured by a charge against Lord Cochrane's private character, which has, I believe, a very simple explanation. Lord Cochrane has told us that he was secretly married in 1812, and the Committee for Privileges eventually decided in favour of this marriage. If, however, it is admitted that it is probable, that to avoid observation Lady Cochrane was very simply dressed whenever she came to see him, and that she occasionally took with her to his house in Green Street such of his belongings as he did not require in his prison, the whole charge falls completely to the ground. Still, I think it cruel of Lord Cochrane to have exposed his young wife to the sneers of a De Berenger and his fellow-prisoners.

With this exception, I look upon the book as probably quite as truthful as the 'Autobiography of a Seaman,' which I admit is not high praise.

De Berenger's own account of the affair is not without interest. Much of the book is evidently written as an answer to the attacks on De Berenger contained in Lord Cochrane's 'Letter to Lord Ellenborough.'

'The Noble Stockjobber' is rather heavy reading. De Berenger apologises for his 'repeated encroachments on his indulging reader's patience, on the ground that he is writing in what is to him a foreign language.' He complains bitterly of the treatment he received from his fellow-conspirators. His confinement in the same prison as Lord

'The Noble
Stock-
jobber,'
p. 182.

Cochrane and Mr. Butt appears to have been the cause of an occasional scene.

Bound up
with
pamphlets
at the Inner
Temple
Library.

A pamphlet appeared in answer to 'The Noble Stock-jobber,' in May 1816, entitled 'De Berenger Detected,' printed by W. Jackson. The object of this pamphlet is to contradict De Berenger's statements about Lord Cochrane, and it publishes a letter said to be written by De Berenger to Tahourdin on February 17, 1814, part of which was read in the House of Commons on July 5, 1814. De Berenger denied the existence of this letter.

I am inclined to think that De Berenger wrote the letter in question, but at a later date, possibly on February 27. At the trial it was shown that Tahourdin dated the letters received by him in a manner which excited much suspicion.

Though I do not wish to be understood as relying upon any of De Berenger's unsupported statements, I think that he would scarcely have ventured to make assertions which could have been contradicted by numbers of people in the year 1816. For instance, he says that he met Lord Cochrane repeatedly in the month of January, and gives lists of the guests who were present on some of these occasions. I give a specimen of one of these lists.

'The Noble
Stock-
jobber,'
p. 43.

Friday, 21st January—Dined in Portman Square with the Hon. Basil and Mrs. B. Cochrane, Admiral Sir Alexander and Lady Cochrane, the Hon. Cochrane Johnstone and Miss C. Johnstone, Admiral Hope, Miss Hope, Lady Trowbridge, Colonel Dillon, Colonel George Cochrane, Mr. Turton and Lord Cochrane, and several other gentlemen.

He quotes a letter that he received from Lord Cochrane :

p. 26.

DEAR SIR,—Your papers are very clear, as all writings are which come from your pen. Such, however, are the circumstances in which I am placed, that it is not in my power at present to avail myself of your polite offer. If you will go to America with me, we will talk the subject over on the passage.

February 17th, 1814.
Baron de Berenger, etc.

Yours very truly,
COCHRANE.

This letter is referred to as follows at p. 80 in the pamphlet called 'Review of the Case of Lord Cochrane, 1830':—

Notwithstanding his pretended intimacy with Lord Cochrane all that he was able to produce in his handwriting was one short note, dated February 17th, and that of a perfectly innocent character, declining a proposition from him to accept a share in an oil patent. It is probable that De Berenger had burnt all incriminating correspondence.

De Berenger uses this note to prove that Lord Cochrane was well acquainted with his handwriting, and that he would have recognised it when Dewman brought him the note from Green Street.

De Berenger says that on Saturday, February 19, he, in compliance with another pressing invitation, went to Mr. Butt's office, little dreaming that he should go out of town that evening. He there found Mr. Cochrane Johnstone, Mr. Butt, and Lord Cochrane, and after half an hour's conversation on general subjects, the discourse was directed to the state of the Funds. At length—namely, about two o'clock—Mr. Butt informed him that if he could not help him they should all be ruined.

'The Noble
Stock-
jobber,'
p. 63.

p. 65.

He then, for the first time, produced his plan, and gave it to Mr. Johnstone with a private intimation that he was to keep it secret from the others, and he was greatly surprised and offended at his handing it over to Lord Cochrane, as he had not till then the slightest suspicion that either Lord Cochrane or Mr. Butt was aware that he had promised to furnish Mr. Johnstone with a plan of that description.

Mr. Johnstone then told him that they were all as one in that business, and at last, after some hesitation, and merely to prevent the ruin of his friends, he did at their joint and urgent request consent to put his plan into immediate execution.

De Berenger says that he calculated the expense of the expedition at about £51, and that he was given £60—£20 from each of them (Lord Cochrane, Butt, and Cochrane Johnstone).

When Mr. Butt was going

p. 68.

Lord Cochrane called him back, saying—'Take care, Butt, how you give instructions to the brokers; it's late in the day and from that and the prices they may suspect us.' 'Let me

alone for that,' was his reply; 'I'll have quite new faces for these purchases.'—He then mentioned several persons, amongst others Mr. Richardson. However, Mr. Richardson was not the only 'new face' Mr. Butt employed, for he purchased considerable sums through other channels, which the penetration of the wonderful committee never unveiled; and the profits of these purchases, which can be pointed out, were consequently shared by the three speculators.

When Lord Cochrane was about to leave, De Berenger stopped him, saying, 'My plan would be imperfect unless he as a seaman would give me certain information.' That

'The Noble
Stock-
jobber,'
p. 71.

Lord Cochrane's advice consisted in his strangely urging me to drive 'from Dover to Deal, to knock up old Foley, the port admiral' (his own words), which would cause him to work the telegraph.

De Berenger says that he objected to this as unusual conduct in a bearer of despatches.

Lord Cochrane however persisted on the ground that it was of *incalculable* value should the telegraph bring up the news.

Eventually he compromised with his lordship, after much difficulty, by most solemnly engaging to contrive that a letter should be forwarded to the port-admiral. At this time he did not know that Wednesday the 23rd was the settling day.

p. 72.

The conspirators wished De Berenger to pretend to arrive at Dover at three or four A.M., but he preferred to wake the people out of their first sleep and after the jollity of a Sunday night, and he wished to avoid passing through towns where there were military depôts, so as to avoid the risk of being questioned by officers who might force him to betray himself.

p. 75.

He states Lord Cochrane also told him to come to his house, but to change the hackney coach on his way; he then for the first time informed him of his removal from Park Street to Green Street.

p. 191.

De Berenger says he did not change the coach, because Mr. Barwick followed it so closely, and, as he recognised

Barwick as a person he had seen before, he was afraid that the recognition might have been mutual.

He states that the letter to Admiral Foley was written in London by a confidential friend of his and taken down to Dover.

'The Noble Stock-jobber,' pp. 87-9.

That he bought a scarlet coat with blue cuffs and collar and embroidered gold buttonholes, a pair of dark bottle-green overalls, a star, a silver medallion, and a black leather bill-case about ten inches by six, and an inch and a half thick, also a fair-sized portmanteau of yellow leather, a plain grey military great coat with covered buttons, and a dark brown fur foraging cap with a gold band. He sewed the star on to the scarlet coat. He went to Dover by coach and left the yellow portmanteau with an old blue coat in it and other clothes at the inn at Dover. He says that every military man will confirm his statement that the collar and cuffs must have been blue if they belonged to a British aide-de-camp. He also purchased some napoleons with money of his own.

p. 116.

He left his letter to Admiral Foley on the table of the inn on purpose to tempt the curiosity of the people of the inn, with the result that two expresses sent from Dover with the good news reached London before him.

p. 138.

See 'Trial,' pp. 74-6.

He also points out that, had he really changed his uniform to that of a sharpshooter, either in the chaise or in the hackney coach, there would have been no occasion for him to go to Lord Cochrane's house for a disguise. Anyone might have seen him dressed in green, without thinking of the messenger in scarlet.

'The Noble Stock-jobber,' p. 171.

Dewman, Lord Cochrane's servant, opened the door for him, and he sent him with a note to Lord Cochrane. Shortly after Dewman had left, the maid brought a message from Lord Cochrane's housekeeper asking him to breakfast, which invitation he declined on the ground of being tired and travel-stained. The maid brought him water to wash.

pp. 198-200.

After his ablutions were finished he received a more pressing invitation.

On arriving in the drawing-room, I began by making apologies, on purpose that my excuses for continuing to wear my bulky great coat might be received, unaccompanied by any reason

p. 200.

for such extraordinary conduct; for all that could be learnt from me was, that I neither could nor would take it off, though invited so to do, to be 'more comfortable as there was a good fire,' which strange appearance, as well as incoherent address, induced the lady some time after to describe me as being 'deranged.'

'The Noble
Stock-
jobber,'
p. 201.

After repeated and certainly most obliging and considerate entreaties to go to rest after my fatigue, the breakfast being over, the lady quitted the room.

I think it probable that this lady was Lady Cochrane, and that the housekeeper Eleanor Barnes who made the following affidavit was another person altogether, and that therefore her affidavit may have been perfectly truthful.

That she well remembers being told that an officer came to his lordship's house in Green Street, Grosvenor Square, on Monday, the 21st February last; and this deponent further saith, that at the time the officer arrived, she was not at home, but that she returned between eleven and twelve o'clock. That seeing a cap in the parlour, she inquired of Mary Turpin whose cap it was, and that the said Mary Turpin replied, that it belonged to an officer who was with his lordship in the drawing-room; and this deponent further saith, that she took up the cap which was of a dark brown colour, with a gold band and tassel and immediately afterwards went to her room and did not see the officer. That this deponent never saw Captain Berenger to her knowledge.

Hansard,
xxxviii.
571-9.

Sworn in Court June 14, 1814.

'The Noble
Stock-
jobber,'
p. 194.

The note that De Berenger wrote to Lord Cochrane when in Green Street was unsigned. It stated that it conveyed great surprise at his absence, and requested his undelayed return. That when this note was brought back to him from Cumberland Street, he added to it 'that I neither would or could move until I had seen Lord Cochrane,' that it was these words that caused Lord Cochrane to say 'Then I must return.' He calls attention to the fact that had he wished to change his clothes in the post-chaise, he would have pulled up the front blind, to prevent the post-boy seeing him, and not the side blind only. The distance between the Lambeth Road and the Marsh Gate was only three or four hundred yards.

pp. 231-4.

When Lord Cochrane returned he asked De Berenger, 'How could you be so imprudent as to send me a wafered note?' which was retorted with 'Had your Lordship attended to your promise and stayed at home, this trifling uneasiness to you, as well as many greater to me would have been spared.'

'The Noble Stock-jobber,'
p. 201.

De Berenger points out that no one would have dared to send for Lord Cochrane in such a manner, unless he had been certain that the business was of as much importance to Lord Cochrane as to himself, and that otherwise he would have been exceedingly annoyed with any person, at being sent for in this peremptory manner.

p. 213.

Lord Cochrane took him up to the second floor, helped him to pull off his scarlet coat, and gave him the long overcoat that he had himself been wearing, as well as a low crowned hat of a peculiar shape.

p. 202.

The writer points out the absurdities of Lord Cochrane's affidavit, in which it appeared that Lord Cochrane actually believed that De Berenger would go to Lord Yarmouth and other high officials, unshaven, with undressed hair though wearing powder, dressed in a coat that was a great deal too long for a man of his height, with a broad-brimmed, low-crowned hat, and in dirty boots that had been under a quantity of straw during a journey of seventy-two miles. None but a madman, so accoutred and so dirty, would have gone in such a costume to call on officials of the highest rank. He would have been the laughing-stock of their servants, who would have shut the door in his face, believing him to be either mad or drunk.

pp. 200-6.

De Berenger left Green Street in the hackney coach that had brought Lord Cochrane there. He tells us that on leaving Lord Cochrane's he first went to a hatter's, as he could not face his servants in Lord Cochrane's queer 'Obadiah' hat, and that he paid off one coach and took another at the hatter's.

p. 250.

He says Lord Cochrane had never seen him at any time in his military dress as a sharpshooter, and that he dined at Basil Cochrane's in Portman Square on the evening of the fraud, and that Lord Cochrane came in afterwards. At this entertainment the fraud was the principal subject of conversation, as it probably was at every other evening

p. 253.

party in London on that night. All looked pleased, and Lord Cochrane smiled sweetly at him.

'The Noble
Stock-
jobber,'
pp. 255-6.

De Berenger makes some sarcastic remarks on Lord Cochrane's having omitted to mention this second meeting in his affidavit. If the affidavit had been true, Lord Cochrane would have been much surprised at seeing him again so soon, and at finding him properly dressed in his own clothes.

I do not myself think that De Berenger would have dared to invent this story of their having met again on the evening of the fraud, because if it had been a falsehood it could easily have been refuted in 1816.

p. 259.

Before Mrs. Basil Cochrane's party broke up, Mr. Johnstone asked him to dine next day, 'when the party consisted of Miss Cochrane Johnstone, her father, Lord Cochrane, Mr. Butt and myself. Instead of the cheering and glowing smiles of Monday, all was gloom and pensive distance.' Few were the words at dinner—the room was scarcely to ourselves (the lady having left) than I was requested to state the whole of my proceedings. During the adventurous recital all were gay, animated, nay delighted ; but scarcely had it been closed when the former gloom prevailed.

p. 267.

In fact, the conspirators were getting anxious, and wished De Berenger to keep out of sight. Various schemes for effecting this were discussed. On Thursday morning, February 24, he met Lord Cochrane and Cochrane Johnstone at Donnithorne's, the scene of the alibi. Much of what took place on the 24th was afterwards stated at the trial to have taken place on the 20th. Various plans were again discussed. Among others, De Berenger says that Lord Cochrane suggested to him that he should say that he was 'employed by Lord Yarmouth in this hoax ; anything about him will go down.' In the evening he again went to see Cochrane Johnstone there, who told him that his share was to be £1,000, and that he brought him £400 on account in one-pound notes. It was proved at the trial that these one-pound notes had been obtained on the same day and were the produce of a cheque of Lord Cochrane's.

p. 274.

p. 276.

p. 281.

Having ascertained that burning would cause too powerful a smell, he cut the scarlet coat to pieces and threw it into the

Thames. He had already given Lord Cochrane's coat and hat to his servant.

On Saturday the 26th, Cochrane Johnstone called on him in his absence, and left a note requesting him to call at Donnithorne's at 9 A.M. on Sunday. When there Mr. Johnstone drew a harrowing picture of his own misery and Lord Cochrane's despair, and implored him to fly, as the Bow Street officers were on his track, and it would be best for him to leave town that night, to start for Leith, and embark there for Holland. He told him that Lord Cochrane threatened to commit suicide if the fraud was discovered, and he promised that he himself would come and meet him in Amsterdam, and that ample provision should be made for him. Cochrane Johnstone also gave him £90 more in two notes of £50 and £40.

On receiving De Berenger's letter from Hull, dated March 1 (the one referred to at the trial, p. 224), the conspirators were under the impression that De Berenger had embarked for Holland, and Lord Cochrane thought it safe to produce his affidavit.

'The Noble Stock-jobber,' p. 262.
p. 293.

I ought to mention that De Berenger had secret plans for the destruction of ships, as well as Lord Cochrane. His plan consisted of pouring 'constant and adhesive supplies of liquid fire' from a distance of 1,000 yards on to the sails and rigging of a ship-of-war. He says that a soldier could use it at a distance of 400 yards against ammunition wagons.

p. 22, and App. No. 9. De Berenger's 'Invention.'

He states that he never divulged his invention to any one. He wanted £33,000 from the Government for this plan. It is not the same as Lord Cochrane's.

After De Berenger's sentence had expired his creditors interfered to prevent his release. In his book he gives a synopsis of a second part that he meant to publish at some future period. In this synopsis he declares that an infamous agent offered him heavy bribes to induce his consent to fixing the whole transaction on Lord Yarmouth. I do not think that it ever appeared, at any rate I have failed to find it. In 1835 he appears to have been fairly flourishing, and wrote a book called 'Helps and Hints how to Protect Life and Property; Rifle and Pistol Shooting, etc.'

CHAPTER XVII

LORD COCHRANE'S CHARGES AGAINST LORD ELLENBOROUGH IN 1816

ON March 5, 1816, Lord Cochrane brought forward thirteen Articles of Charge against Lord Ellenborough. As William Jackson claims the credit of having drawn them up, I give an extract from his evidence.

Before the
Commis-
sioner for
Committee
of Privi-
leges, 1862.

p. 19.

Q. Can you specify any personal affairs he consulted you about ?

A. About the affairs of the fraud, I was concerned in all that, writing his defence and drawing up his charges against Lord Ellenborough. There were fourteen charges I drew up for him ; they were ordered to be printed by the House of Commons, but they were expunged afterwards.

Q. In short, you did all his literary work for him ?

A. All his literary work I did entirely for him.

Q. The confidential affairs you spoke of were such as were connected with that literary work ?

A. Yes of course, I wrote several pamphlets for him.

I have thought it best to insert this extract from the secretary's evidence here. I shall afterwards prove that Lord Cochrane's ' Autobiography ' was largely based on information supplied by him.

Atlay,
pp. 242-3.

Each article of charge was accompanied by a long argumentative statement. The whole document occupies sixty pages and took some hours to read. Mr. Atlay has reprinted the whole of these thirteen charges. For the commentary I must refer my readers to Hansard.

On March 7, 1816, Lord Cochrane moved for certain letters that had passed between him and the Admiralty. Some of them were produced, but as regards two letters said to have been written on March 8, 1814, Lord Cochrane's

application is the only evidence I can find as to such letters ever having been written, and I do not accept that as sufficient proof that they ever existed.

On March 29 Lord Cochrane moved for leave to bring an additional charge against Lord Ellenborough, which contained accusations against Sir Simon Le Blanc. This fourteenth charge was not allowed to stand, as the manner in which it was made gave Sir Simon no opportunity of refuting it, and it was accordingly withdrawn. Sir Simon Le Blanc died on April 15, 1816.

On April 30 Lord Cochrane moved, and Sir Francis Burdett seconded, the motion that these charges be taken into consideration.

Lord Cochrane proposed to examine in support of the first charge

all the counsel, one of whom now sat on the bench whence it had pleased the Almighty to remove two of those who had sanctioned his unjust sentence to a tribunal whence there was no appeal. They now knew whether he merited the treatment he had received. The jury and shorthand writers he also proposed to cross-examine, to prove the artificial reasons assigned by the Lord Chief Justice for compelling his counsel to proceed with his defence after the hour of midnight.

Hansard,
xxxiv. 105,
et seq.

The Hon. Edward Law, eldest son of the Chief Justice and a future Governor-General of India, rose to reply. He said that—

The importance of the question arose not from the nature of the charges on the table, which were far too contemptible to require a laboured refutation but arising from their tendency to vilify the administration of the justice of the country.

He did not believe that the noble Lord's object was to destroy the character of the Lord Chief Justice; if such were his object let him proceed to praise him.

But on the present occasion all he asked for was justice, strict justice, and no more. He had always considered that the equal administration of justice to high and low, rich and poor, was one of its noblest attributes.

The noble lord had called upon the House to destroy this proud distinction of the country, that there should be a different law to the private individual, and to the member of parliament.

And in what case was it proposed to subvert the equal administration of the laws? It was not in the case of charges brought by a third party but by a convict against the judge who tried him. It was impossible not to feel that the House would reject them with indignation.

He concluded by saying—

Was it necessary to call to the recollection of the House that the jury, in finding him guilty, disbelieved him even on oath; and that he was consequently an incompetent witness in any court of justice? Upon the whole he left the case entirely in the hands of the House with a perfect conviction that they would place against the motion of the noble Lord their negative of indignation and contempt.

I have in my possession the manuscript notes of this speech, which contain some passages which do not appear to have been delivered in the House.

Some of them have sufficient interest to justify publication.

Where is the proof, where the probability of wilful and corrupt partiality in the Judge?

The Judge an admirer of gallant actions, and with jury and public partial to Cochrane, and as gentlemen unwilling to believe the fraud to have been possible.

Can House believe judges and jury united in conspiracy to ruin him?

All this preparation has discovered nothing that upon a reference to the trial is not answered immediately.

New evidence has been mixed up in pamphlet, and assertions considered as proof.

Lord Ellenborough had no knowledge of Lord Cochrane. Zeal for naval service would have made him partial and anxious to acquit.

The Judge decides on sentence without considering individuals.

Throne the proper fountain of mercy. As a mark of gratitude for past services.

The Right Hon. George Ponsonby spoke next. He was the Leader of the Opposition and had voted against Lord Cochrane's expulsion in 1814. He had himself practised at the Irish bar with success, and had once held the office of Lord Chancellor of Ireland. He said:

That he was unable to see the propriety of that rule of court which refused a new trial, unless all the defendants were present ; but this was the rule acted upon by the whole court ; the blame, if blame there was, could not attach to one ; and the proper way of remedying the grievance was, to alter the law on the subject ; nothing could be more unfounded than to make it ground of charge.

And as regards the adjournment he said that the judge did nothing but what was perfectly lawful, even on the statement of the defendant. Nothing, to his mind, arose from the circumstance, at all indicating partiality, or injustice. He confessed it was always to be regretted when any adjournment of a trial took place, though in some cases the length of the proceedings might render it unavoidable. But what disadvantage arose to the noble lord from the precise period of the trial at which the proceedings were adjourned ? He confessed he could see none. Nay the very circumstance of the statement of his case being the last thing left on the recollection of the jury, appeared rather advantageous to the noble lord. He had the benefit of the impression, which his counsel endeavoured to raise, being left as the last thing on the minds of the jury ; and next day the evidence in his favour was most likely to operate an additional prepossession in his favour, if it availed anything at all in the estimation of the jury. He protested, he could see no improper purpose, no undue object in the mind of the judge, and if there were none, to what purpose should the House go into a committee ? He had examined all the charges, and he declared he could see no ground for impeachment of the chief-justice, or for taking any step which might imply the slightest doubt of the rectitude of his conduct.

He felt it due to the character of the judges to afford them support wherever they maintained the course of uprightness ; and nothing could be more cruel than to bring forward unfounded statements.

The Solicitor-General (Sir Samuel Shepherd) said :

He should now make one or two observations on the first charge. The Right Hon. gentleman who spoke last, had most truly said, that what the noble judge had done, so far from operating against the prisoner, had turned materially to his advantage ; namely the giving time for the impression that had been made on the minds of the jury to take its due course, with

respect to the counsel, he would venture to say in a trial of this sort, which depended not on any investigation of nice legal arguments, not on points of abstruse or difficult learning, but on a plain statement of facts he should say as a counsel himself, when the whole evidence was warm from the hearing, 'Let me now state what I have to offer, and don't let me be called on to-morrow morning when the impression now so warmly felt shall have become cold and weakened.' He should have preferred this as a counsel himself at whatever expense of bodily or mental fatigue.

It was clear from the whole tone of the articles, they did not come from any conviction of mind on the part of the framer of them, but from a cautious research for points of captious objection. Where was the noble judge alleged to have mistaken the law? Where was he alleged to have mistaken fact? Nowhere! save as to one Alexander Murray, which was now proved to be without foundation.

And who was the fairest judge of the construction to be put on facts, a person who was not implicated, whose mind came to the examination unbiased, whose fame and character were at stake on the construction he should form—or the accused himself?

What was it to him (the judge) beyond the event of the trial, what became of De Berenger, of Butt, of Cochrane Johnstone?—what even of the noble lord himself? He would call the attention of the House to the character of the noble judge. Never was there an individual at the bar or on the bench less liable to the imputation of corrupt motives. Never was there one more remarkable for independence he would say sturdy independence of character, than the noble and learned lord.

For twelve years he had presided on the bench with unsullied honour, displaying a perfect knowledge of the law, evincing as much legal learning as was ever amassed by any individual. And now in the latter part of his life, when he had arrived at the highest dignity to which a man could arrive, by a promotion, well earned at the bar, and doubly well earned on the bench, they were told that in the face of the public, when all around him had an opportunity of detecting him, he had sacrificed all his honours, by acting from corrupt motives for which no reason whatever was assigned.

Let the House read the trial, let them look at the evidence, let them consider the summing up and the comments of the

learned judge and they would assuredly come to the conclusion, that instead of pressing the case too hardly he had omitted much that might have been urged against the noble lord. There never was a fairer nor a more impartial charge than that delivered by the learned judge, in summing up the case.

The learned judge was accused of partiality, misrepresentation and injustice because he did not reason in the same way the noble lord would have done.

Sir Francis Burdett was Lord Cochrane's only supporter. He stated in open contradiction to the facts that 'the counsel had distinctly declared their inability from fatigue to enter into the defence at such a late hour of the night.'

Then he declared that the 13th charge contained a very serious accusation that 'the Chief Justice had unwarrantably enforced an opinion that De Berenger appeared before Lord Cochrane in a red coat of which there was no evidence.'

I have already pointed out that not only Serjeant Best's admission, but that the evidence fully justified this opinion.

Sir Francis said if what the noble lord here stated had been proved in evidence (but he denied that it was) and had he, Sir Francis, been on the jury, he should have been compelled to return that verdict which the jury had given.

He made another important admission. He complained that the Solicitor-General had selected the weakest charge for attack, i.e. the adjournment. I have already shown that late sittings were not uncommon in those days, and so that the charge now thought to be the strongest was considered by Sir Francis to be the weakest.

Then he dealt with the new trial question, but carefully omitted all reference to the proceedings on June 20, when Lord Cochrane had been allowed to address the Court without interruption.

The Attorney-General (Sir William Garrow) was the next to address the House. As regards the adjournment, he said that :

The learned judge to whom this conduct had been imputed, had been so well vindicated with respect to his conduct in this

instance by the right Hon. gentleman opposite (Mr. Ponsonby) little or nothing was left for him on the subject.

He said that those who complained of the lateness of the adjournment knew little of the hardships to which the profession were subjected if they thought this would be considered to press very hardly on those whose situation was thus made the subject of commiseration. He himself had been engaged in his professional labours from nine o'clock that morning without having taken the slightest rest or refection, and he should be extremely ashamed if he could not continue his exertions till a later hour of the night than that at which they had arrived.

In a case like that of the noble lord the counsel, from finding it hopeless, might be content to adjourn on the plea of their being fatigued, but the result on this occasion had proved that they were not disqualified for the performance of their duties, for, on looking at the defence, it must be admitted that mortal man could not have made more of such materials as had been made of them by the counsel for the noble lord.

If what he (Crane) had said were untrue the noble lord might have found means of proving it to be false, but two years had passed away, and who had dared to indict him for what he had sworn at the trial?

Did the noble lord suffer by such a refusal (of a new trial)? No! His case was heard over again by the judges, the notes of the lord chief justice who presided at his trial were read, an opportunity was allowed of comparing them with the shorthand notes taken by others; and after the most mature deliberation, after re-hearing all the depositions of the witnesses, and any new affidavits that could be brought forward, a full court of judges confirmed the verdict of the jury, and decided that there was no ground for a new trial.—They all supported the direction of the lord chief justice and the finding of the jury.

See
Hansard.

Sir Francis Burdett, in explanation, denied having attempted to take away the character of Crane.

Lord Cochrane then spoke again, and reiterated his charges.

The House divided, 89 to 0. Lord Cochrane and Sir Francis Burdett found themselves unsupported, with no one to count.

¹ Dr. Kenealy was more fortunate when he brought charges against L.C.J. Cockburn. He and his teller counted a single supporter, Major O'Gorman.

Nearly two years had elapsed since the trial, more than six weeks had elapsed since the charges themselves had been laid before the House, together, with the sixty columns of comments thereon, and the House of Commons was no longer in that state of ignorance which showed itself in the speeches made in the earlier debates on the trial. Yet, with the exception of his Westminster colleague, not one man out of an assemblage of more than 600 could be found to give his support to Lord Cochrane. The House of Commons in its worst days has never been so corrupt as to be unable to find among its members some few men who would support an honest cause.

Ninety-eight years have elapsed since this vote was taken, and I think I may safely assert that not one atom of additional evidence in support of these charges has been placed before the public. Assertions have been made by Lord Cochrane and some of his friends. Of additional evidence there is none.

In a letter to *The Times* of January 21, 1896, there is a suggestion made that Lord Cochrane suffered from colour-blindness, and so may have confused the red and green coat. But he lived till 1860, and spent a large portion of his leisure in scientific studies and experiments. I should have thought he would have been one of the last men in the world not to have discovered that he was colour-blind, had he really been so; but in all the literature devoted to him, I cannot discover a hint on this subject. It should be remembered that during the most important portion of his career at sea, he was generally in company with other ships-of-war, and was in consequence perpetually signalling, or looking out for signals. Could such a physical defect have escaped him? The writer can have known little of the facts of the trial, or he would have seen how much was left unaccounted for even on that hypothesis.

On their side Mr. Ponsonby moved that all the entries in the notes of the House of the proceedings relative to the articles of charge be expunged, and Lord Castlereagh seconded the motion, which was carried *nem. con.*

Mr. Townsend, a believer in Lord Cochrane's innocence, commented as follows on this debate in 1850 :—

Modern
State
Trials.' ii. 9.

The stern integrity and iron virtue of the Chief Justice demanded this public vindication. He scorned the sordid fraud, and was deeply impressed with the importance of making it known to the whole country in what light the law contemplated the magnitude of the crime, what was its true character, and what was the nature of the punishment attached to it. In defiance of all speeches in the House of Commons, and addresses to the electors of Westminster and charges of impeachment, Lord Ellenborough knew his own dignity too well to condescend to utter one syllable of explanation or apology.¹

This debate and division was practically a new trial before a tribunal that had had ample opportunity of becoming acquainted with the facts. Still the completeness of the success of Lord Ellenborough's supporters had its disadvantages. The sons and grandsons of Lord Ellenborough looked upon this decision of the House of Commons as conclusive, and none of them thought it necessary to study the trial.

When the subject again came up before the House of Commons in 1877, an assembly whose sole knowledge of the subject appears to have been derived from the Earp-Jackson-Dundonald literature, the sons and grandsons of the Chief Justice were utterly astonished at the tone used in speaking of Lord Ellenborough, and unfortunately at that time none of them knew anything whatever about the details of the trial. They had always looked upon the Dundonald charges as 'too contemptible to require refutation.'

¹ A similar course was adopted by the Lord Chief Justice Alverstone when he was attacked on account of his decision in the Alaska boundary case. At the Mansion House dinner, on November 9, 1903, he said: 'I am not come here, and no man could expect me to come here, to justify my judicial conduct by any public speech. (Cheers.) If the judges of England, when they have given their judgment on their own responsibility, thought it necessary afterwards to explain and justify their conduct by public utterances and by public argument a death-blow would be struck at the confidence in judicial decisions.' (*Times*, November 10, 1903.)

CHAPTER XVIII

DAVIDSON'S TRIAL

THE prosecution of Davidson for perjury took place on July 20, 1816, in the Court of King's Bench, before Mr. Justice Abbott, afterwards Lord Tenterden. As Lord Cochrane in his 1847 memorial described Mr. Justice Abbott's conduct as atrocious, and as the 1830 pamphlet gives a most inadequate and misleading account of what took place on that occasion, some further reference to it is necessary.

Lord Cochrane's object presumably in instituting the prosecution of Davidson, was to demonstrate that his own prosecutors had not scrupled to employ false witnesses. He has also made great use of the evidence as to De Berenger being seen in a green coat at Dover. But with regard to the former point, that of the employment of perjury against him, he was certainly unfortunate in the choice of a victim. Even had Davidson been convicted, the part of the case to which his evidence had been adduced was one that exclusively concerned the guilt or innocence of De Berenger, and it had the very prejudicial effect of recalling to the public mind the disgraceful circumstances attending the attempted alibi.

Atlay,
p. 265.

Upon the panel for the special jury being called only five persons appeared. The Counsel for the prosecution having been asked if they would pray a *tales*, namely that the Jury should be completed by common jurors, Mr. Marryat and Mr. Spankie consulted with Mr. Basil Cochrane who was in Court, whether they, on the part of the prosecution, should take that course. After a short interval, they declined praying a *tales*.

*Morning
Chronicle
and Times,*
July 22,
1816.

Atlay,
p. 261.

This reluctance to proceed without the full complement of special jurors is very remarkable after the abuse heaped on special jurors by Lord Cochrane in the House of Commons,

and it does not show any great desire of the prosecution to proceed with the case. Yet in 'De Berenger Detected' (p. 12) we are told that Davidson's legal advisers had contrived to delay the trial.

The trial could not have been proceeded with, had not Mr. Gurney on the part of the defendant immediately prayed for and obtained the *tales*.

Atlay,
p. 263.

It will not be necessary to say much with regard to Davidson's trial, as Mr. Atlay has dealt with it in detail. But Lord Cochrane, in the pamphlet published under his authority in 1830, spoke very bitterly of the decision of the jury and of the conduct of the Judge. [In his 'Memorial,' published in 1847, he described Abbott's conduct as atrocious.] Having regard to the fact, as I have said, that Lord Cochrane complained of the conduct of the Judges, and indeed also of the jury, I think it necessary to give some extracts both from the speech of Gurney, counsel for the defence, and from the summing-up of the Judge.

Times,
July 22,
1816.
Atlay,
p. 263.

Who was the prosecutor? said Gurney. He was not avowed; he was concealed; and the present was perhaps the first case that had occurred in which the prosecutor skulked behind a screen, afraid openly to appear as an accuser. Was the prosecutor Mr. De Berenger or some of his co-defendants, accomplices to his crime and companions in his punishment? . . . Let him be who he might, the refusal of his Counsel to pray a *tales* showed no little anxiety even in this last stage to avoid a public trial.

Times,
July 22,
1816.

Did Lord Cochrane complain that any witness who had proved his connection with this scandalous business had sworn what was untrue; or did De Berenger deny that he was the main instrument in the transaction? *Did either of them come forward publicly and openly in a Court of Justice to deny any important fact connected with their conviction?* No: and the admitted guilt of De Berenger was the very foundation of the present prosecution? What, then, was the real purpose of this proceeding? *Was it by imputing falsehood to a witness on a fact unconnected with the real merits of the case to draw into question the justice of the former conviction when, upon every point material to the guilt of the parties, not a witness had been indicted?*

Atlay,
pp. 263-4.

If De Berenger were not the prosecutor, had Lord Cochrane now become the champion of his former friend? *Did his lordship*

now connect himself with the man with whom on the 8th of June he contended he was totally unconcerned ?

If Lord Cochrane had been in reality no party to the foul conspiracy, *why had he not indicted for perjury the witnesses who had sworn that he was ?*

The defence on the former trial furnished matter for more than two or three prosecutions, *not only for perjury*, but for, if possible, *the more profligate crime of subornation*. . . . This at least was clear, that the defendant had not wilfully forsworn himself, and that the fact on which he had been mistaken was immaterial to the question.

After some preliminary observations Mr. Justice Abbott said :

It is not necessary to go through the evidence now produced, three witnesses have sworn to the fact, and none have been called in contradiction ; and you have probably made up your minds that when the defendant said that De Berenger was in London on Sunday morning at 11 o'clock, he spoke untruly.

Atlay,
p. 264.

But arriving at that conclusion, you will only have proceeded one step towards conviction, because, as I have already stated, no man can be found guilty of wilful and corrupt perjury on the mere proof that the matter to which he deposed was untrue ; you must be satisfied that the untruth was uttered as a deliberate falsehood—as the act of a wilfully corrupt man who had the criminal intention charged against him. . . .

Mr. Justice
Abbott's
summing-
up.
Times,
July 22,
1816.
Atlay,
p. 264.

If, therefore, you are of opinion that this untruth did not proceed from a wilful and corrupt mind to cause De Berenger and the others to be convicted ; but that it originated in some inadvertence or confusion of one Sunday with another, the defendant will be entitled to your verdict. . . .

p. 265.

The question, therefore, you have to ask yourselves, supposing that you are satisfied that the defendant swore untruly, is whether he swore corruptly, whether it was the act of a wilful and corrupt mind of a man desirous to cause the defendants to be convicted against the due course of law and justice ; and, if you are of that opinion, you will find him guilty ; if rather, on the contrary, you believe that he so swore from inadvertence or confusion in his mind, then the defendant will be entitled to your acquittal.

p. 265.

The jury immediately delivered in their verdict—Not Guilty.

This trial was the heaviest blow that had fallen on Lord Cochrane since his conviction for fraud on the Stock Exchange. It showed that he had no case, that he dared not appear in court as the prosecutor of Davidson, though years afterwards, when the case was forgotten, he claimed to have prosecuted him. And why had he not dared to prosecute Crane? Why had he not brought his four servants and seven affidavit makers into the witness box, and also asked permission to enter it himself?

CHAPTER XIX

COCHRANE'S TRIAL FOR ESCAPE

ON July 29, 1816, Lord Cochrane attended a public meeting at the 'London Tavern' held under the auspices of the Association for the Relief of the Manufacturing and Labouring Poor. The Duke of York was in the chair, supported by the Dukes of Kent and Cambridge, the Archbishop of Canterbury, Duke of Rutland, and Mr. Wilberforce: they all addressed the assemblage. Lord Cochrane, however, succeeded in breaking up the meeting by trying to introduce a quantity of irrelevant political matter.

'Life of Lord Dundonald,' i. 84.

His eldest son tells us 'That his conduct on this occasion was extravagant and even factious, he afterwards heartily regretted.' He goes on to say, he was much thanked for his proceedings.

Ibid.

As the previous punishment however had not been enough to silence him, the Government determined to revive the old charge as a further act of vengeance. At the special instigation of Lord Ellenborough, as it was averred, the prosecution had been renewed in May 1816, almost immediately after the rejection by the House of Commons of Lord Cochrane's charge against the vindictive and unprincipled judge.

11th Earl's 'Life of Lord Cochrane,' i. 100.

Now the eleventh Earl of Dundonald published this in 1869. He had already asked the Government for a money compensation, in atonement for his father's alleged wrongs, and by this time he saw clearly that calumnious attacks on Lord Ellenborough might yet have a cash value.

I shall deal with the want of principle by which his conduct was animated, when I come to his one volume edition of the 'Autobiography of a Seaman.' In it he

republished whole pages of what he had, two years previously, repudiated in a letter to *The Times*.

'William Jackson's Evidence,' p. 14.

William Jackson, however, tells us that the trial had been put off owing to a flaw having been found in the indictment. From the manner in which this part of the evidence is given, and from the context, I am inclined to accept it as being more likely to be in accordance with the actual facts than the unsupported statement of the eleventh Earl.

'Lord Cochrane's Trial for Escape' (Hone's edition), p. 9 *et seq.*, and *Times*, August 19, 1816.

The trial came on in August 1816, at Guildford. Mr. Marryat prosecuted, and Lord Cochrane chose to defend himself in person. His argument was that as he was illegally imprisoned he had committed no illegality in escaping. *He read from a written speech*, and dwelt on the hardships he had suffered in prison after his escape. It must be noticed that all Lord Cochrane's important speeches appear to have been read. He also produced medical certificates, gave way to his emotions, and by his consummate acting produced a considerable effect on the minds of the jury.

Atlay, p. 274.

Times, August 19, 1816.

Hone, p. 9.

He stated that he appeared himself, because when he had the benefit of counsel he was always unsuccessful. On a former occasion his instructions had been disobeyed, from what motive he could not discover, for it could not for a moment be supposed that an additional fee of fifty guineas for doing nothing could have produced any effect on the minds of the gentlemen at the Bar.

His counsel had thought proper to unite his defence with that of the other defendants on the record, and had thereby acted in direct opposition to his wishes. He had also to remark that the counsel who appeared against him on that occasion had actually received retaining fees from him, had attended consultations on his case, and yet to his astonishment appeared in the list against him. Here Mr. Justice Burroughs interposed: 'Such imputations are extremely improper,' and Gurney said:

Atlay, p. 275.

Hone, p. 16.

My Lord, they are not true. I was never retained by the noble lord in the case to which he alludes. I was indeed consulted on the part of the noble lord respecting a prosecution for libel, and I wrote my opinion on that subject. Three weeks after

I was offered a retaining fee in the prosecution against the noble lord, but I, of course, refused to accept it, having been already engaged against him, and it was not for six months afterwards that I heard a doubt suggested of the propriety of my conduct.

At the conclusion of Lord Cochrane's address Mr. Marryat expressed a hope that the noble lord would call some evidence, 'after the extraordinary speech he had made,' *so as to give the counsel for the prosecution an opportunity of replying to attacks which must otherwise go unanswered,* attacks which referred not only to Gurney's conduct, but to the alleged ill-treatment in prison after the escape and recapture. *Lord Cochrane did not comply with this request.* Had he done so, his witnesses would have been cross-examined, and Lord Cochrane had had a holy horror of cross-examination ever since he had been a witness in the Gambier trial.

'Trial for
Escape,'
p. 22.

On July 3, 1815, Lord Cochrane wrote the following words on the £1,000 note with which he paid his fine :—

My health having suffered by long and close confinement and my oppressors being resolved to deprive me of my property or life, I submit to robbery to protect myself from murder, in the hope that I shall bring the delinquents to justice.

The Governors of the Bank of England and others, who take the responsibility of exhibiting this note, ought, in justice to those whom Lord Cochrane accused of ill-treating him, to place near it a notice pointing out that at his trial for escaping from prison, in August 1816, he made these charges in Court, and that in summing up Mr. Justice Burroughs said : 'The noble Lord had detailed charges against the Marshal of the King's Bench, which as they could not be answered, it was contrary to the principles of honour and of justice to have made.')

Ibid.,
p. 23.

The reason why they could not be answered was because he refused to call witnesses to support them. Mr. Marryat, counsel for prosecution, had complained that he had thus avoided giving the prosecution an opportunity of answering them.

In summing up Mr. Justice Burroughs said that he had

Atlay,
p. 275.

not been able to discover a single sentence of the noble lord's speech which directly or indirectly applied to the issue which they were called upon to try. The noble lord had detailed charges against the Marshal of the King's Bench which, even if well founded, had nothing in the world to do with the conduct imputed to his lordship ; but which, as they could not be answered, it was inconsistent with the principles of justice and honour to have made.

Atlay,
p. 276.

The jury returned the verdict : ' We are of opinion that Lord Cochrane is guilty of escaping from prison, but we recommend him to mercy because we think his subsequent punishment fully adequate to the offence of which he was guilty.' Judgment was moved for in November, and Lord Cochrane was sentenced to pay a fine of £100. This he refused to do, and he was once more taken into custody. Lord Cochrane tells us that his constituents raised the money and he was in consequence released.

At that time the borough of Westminster extended from Temple Bar to Kensington ; from Oxford Street to the Thames. Such a constituency, although principally composed of the poor and illiterate, contained large numbers of wealthy men, and it was by no means a difficult matter for them to raise a sum of £100 for the purpose of releasing Lord Cochrane. There were many individual constituents who might have paid the whole of it without inconvenience. The story of the 2,640,000 subscriptions of a penny each, actually quoted in 1877 by Sir Robert Anstruther in the House of Commons, is one of the most extraordinary of the Dundonald fairy tales. I shall describe its origin and growth in a later chapter.

CHAPTER XX

THE TRIALS OF MR. R. G. BUTT

I HAVE now to deal with another trial which Lord Cochrane and his successors have thought it unwise to mention, or even to allude to in any of their numerous writings.

Mr. R. G. Butt, at the termination of his twelve months' detention, had taken upon himself to walk out of prison, leaving his fine of £1,000 unpaid. He was soon re-arrested, and on payment of his fine he was released. Then he went on a wild-goose chase to the West Indies after Cochrane Johnstone, against whom he asserted he had money claims.

Now both the Master of the Crown Office and Lord Ellenborough had accounts at Messrs. Gosling's bank, and in consequence of this Mr. Butt appears to have thought that his fine had gone into the pocket of the latter.

In March 1817 Mr. Butt went so far as to post handbills all over Westminster, in the neighbourhood of the Law Courts, accusing Lord Ellenborough of putting the King's fine into his own pocket instead of the public treasury.

The Government in consequence resolved to prosecute Mr. Butt for libel on Lord Ellenborough, and also for another libel against Lord Castlereagh, in which he reiterated the charge that he had been 'unjustly convicted by Lord Ellenborough to make money of him.'

The trial took place before Mr. Justice Abbott (afterwards Lord Chief Justice Tenterden) on May 24, 1817.

Mr. Butt appeared for himself, and succeeded in proving even more satisfactorily than the prosecution how utterly destitute of foundation these libels were. He called an extraordinary number of witnesses, some of whom appeared

'Trials of
Richard
Gathorne

Butt,
printed and
published
by R. G.
Butt, p. 9.

and some did not. Among others were Lord Cochrane, Sir Francis Burdett, Lord Sidmouth, Lord Folkestone, Lord Torrington, Lord Erskine, Earl Grey, Duke of Bedford, Mr. Swan, M.P., Hon. Mr. Bennett, M.P., Mr. Brougham, Mr. Mellish (a bank director), Mr. Vansittart (Chancellor of the Exchequer), Lord Holland, Mr. Francis Gosling, and Mr. Wood (the Lord Mayor).

On Lord Cochrane's absence Mr. Butt commented most strongly :

p. 11.

Call Lord Cochrane.—He does not answer.

Mr. Butt.—He was not subpœnæd—he told me it was not necessary, as he should be in Westminster Hall by nine o'clock. And at the second trial—

p. 84.

Call Lord Cochrane.—He does not answer.

Mr. Butt.—I trusted to his honour ; he assured me he would be here by nine o'clock and he has not kept his word.

Some of the newspapers had said that Mr. Butt was mad, and in his speech the Attorney-General remarked :

p. 61.

If the defendant is mad, his madness was as methodical in the means of obtaining his detestable purpose, as if he had enjoyed the most perfect reason ; he has been as deliberate in his proceedings as he has been persevering in procuring its accomplishment. Let him not therefore suppose, by his extraordinary conduct, that he shall go quit on this ground ; he is now at length on the floor of the Court to answer for his wicked machinations, against an exalted individual whom the poisoned breath of grovelling calumny could never reach. Whether the defendant was or was not deranged in his intellects, his conduct this day has shewn that he is fully aware of the nature of his acts, and their consequences ; and Gentlemen, I trust that you will do your duty and find him guilty of the offence of which he is charged.

Mr. Justice Abbott concluded his summing-up by saying :

p. 68.

Absurdity cannot be a justification or a mitigation of illegal acts ; but that was not a defence at all attempted to be set up. You have attended to his examination, and he certainly appears throughout to have conducted himself like a person of acute

understanding. The case is certainly different ; where a person is so wholly bereft of reason as not to know right from wrong—as not to be conscious of the nature or the effects of the act he is doing, then he is not amenable, but here there is no such imbecility or ignorance—the endeavours of the defendants to avoid the technical charge of publishing the libel shews that he knew he was about to be guilty of a crime, and it is this, unquestionably, that renders him amenable to the law.

If the vindictive movements in his breast break out into breaches of the law, he must be liable to the punishment inflicted by the law. The great difficulty therefore with me is, what question I am to leave to your decision. The libel is proved, and indeed admitted ; and an attempt has been made to establish its truth and has failed ; and there is no doubt but that the effect of that libel is to cover with public disgrace the noble lord accused in it, and to bring the administration of justice into hatred and contempt. If you consider the defendant incapable of distinguishing right from wrong, then you must acquit him.

The jury, after a few moments' deliberation, returned a verdict of Guilty.

He was also found guilty on the second charge. On June 23, 1817, he was brought up for judgment before Mr. Justice Abbott, Mr. Justice Bayley, and Mr. Justice Holroyd. The evidence was read through. Butt put in a pile of letters and affidavits, and addressed the Judges at length, after which the Judges conferred together on the Bench, and Mr. Justice Bayley passed a sentence of nine months' imprisonment for the first libel and six months for the second. ' Mr. Butt Trial,'
p. 89.

p. 125.
June 1817.
p. 132.

In referring to the sentence passed on Mr. Butt in 1814 Mr. Justice Bayley said :

That was not the sentence of Lord Ellenborough, unconnected with the other judges of the Court, but on this occasion, as on all other occasions of sentence, each judge has a voice with all the rest ; and I will say this, because I know it, that I know of no instance where the judges have been overborne by the opinion of any other judge. p. 125.

I cannot help feeling some pity for Mr. Butt. At any rate, he was the only one of the Chief Justice's libellers who met with his deserts. I have no further information

about Mr. Butt except that the following prudent entry was found in a memorandum book of Mr. William Jackson's dated May 19, 1862. 'Mean to burn my letters of 1826 and 1828 to Mrs. J., also poor Mr. Butt's letters of 1830 and 1831.¹

See Evidence, p. 33.

¹ In all probability Mr. Butt was consulted about the 1830 pamphlet.

PART III

THE LAST OF THE BUCCANEERS

CHAPTER I

CHILI

IN 1817 Lord Cochrane's pecuniary circumstances reached a crisis. The large sums he had made in prize-money had been dissipated, the debt connected with the Honiton election was not by any means the only one that gave him trouble, though his trial appears to have cost him less than one would have anticipated, for he himself only estimated its expenses at £5,000, including his fine.

‘Remarks on Naval Affairs, 1847,’ pamphlet, p. 81.

At this time nearly all the Spanish colonies were in revolt. The Chilians had started an infant navy, and had already scored some successes against the Spaniards in the Pacific. A Foreign Enlistment Act had no terrors for Lord Cochrane, who had no commission to lose. He gladly accepted the offer of ‘£5,000 a year and other advantages,’ with the rank of Admiral and the command of the Chilian fleet. He sailed for Valparaiso in August 1818. His evil genius, William Jackson, followed him in the *Rising Sun*, which was, I believe, the first steamer to cross the Atlantic. She was not, however, ready to sail until 1821, when most, if not all, of the fighting on the Pacific Coast was over.

‘LadyDun-
donald’s
evidence,
July 24,
1842,’ p. 79.

‘William
Jackson’s
evidence,’
pp. 13-14.

The Chilians had already secured the command of the sea on their own coast. The Province of Peru was, however, still in the hands of the Spaniards; there were Spanish

‘Memoirs of
General
Miller,’
published
in 1829,
i. 191-204.

garrisons to the south at Valdivia, and in the island of Chiloe, which served as harbours for Spanish ships.

On November 7 the Chilian Admiral Blanco Encelada returned to Valparaiso after a most successful cruise. He had captured a large Spanish frigate, the *Maria Isabel*, and some vessels that were in her convoy. On the 28th Lord Cochrane arrived and was given the command of the Chilian fleet.

The history of that command is related in a book called 'Narrative of Services in Chili and Peru,' published by Lord Dundonald in 1859, for the purpose of supporting his pecuniary claims on those countries. In it he attacks most of the persons with whom he came in contact during the three years that he was on the south-east coast of America, more especially General San Martin, and Jose Ignacio Zenteno, who was at that time Minister of Marine in Chili. This book appears to have been translated into Spanish. In 1861 Ignacio Zenteno, son of the former Minister of Marine, published a pamphlet entitled 'Refutacion de las Memorias de Lord Cochrane,' dedicated to the Chilian Vice-Admiral Blanco Encelada.

Zenteno's
'Refuta-
cion.'

Ignacio Zenteno disproves a great many of the statements contained in Lord Dundonald's book, by publishing contemporary documents, 'documentos justificativos.' He, however, gives full credit to Lord Cochrane for his services in capturing the forts of Valdivia and for cutting out the frigate *Esmeralda*.

p. 4.

At p. 4 Zenteno says that Lord Cochrane would never have written in the tone that he did had he recollected that Chili possessed archives, which were the monuments of his avarice, and of the honourable conduct of those whom he called his enemies. At p. 5 he says that in Lord Cochrane's account of his relations with the Government of Chili, there is not a single page that does not contain a calumny, an involuntary error, or 'una necesidad.'

p. 6.

At p. 6 he says that Guise and Spry did not calumniate Lord Cochrane, but that they were the only foreigners who did not take part in his plots. ('Estrangeros unicos que no entraban en los complots del jefe de la escuadra.') Chili

was at that time governed by a senate consisting of five members, which was called the supremacy ('La Suprematia'). Zenteno publishes despatches to the senate dated August 14, 1819, and December 1, 1818, signed by his father and by President O'Higgins, dealing with the question of Lord Cochrane's share of prize-money. It mentions that of the thousand and odd seamen belonging to the squadron only about one hundred English had applied to be entitled to a larger share of prize-money. Zenteno's
'Refutacion,' p.

There is also in existence a pamphlet of eighteen pages, dated March 11, 1822, printed at Lima in 1823, containing San Martin's 'Acusaciones contra Lord Cochrane.' The latter replied by a 'Vindicacion' of sixty-eight pages, dated November 11, 1822, which was also printed at Lima in 1823. It is the more interesting of the two, in consequence of the number of admissions that are made in it. In 1825 Mr. W. B. Stevenson wrote a book, 'Twenty Years in South America.' He had been Lord Cochrane's secretary during the latter portion of his Chilian career, and takes his side. Ibid.
pp. 37-4

Among other documents, Zenteno publishes a letter written by his father in reply to Lord Cochrane's complaints dated May 4, 1820. In it he tells Lord Cochrane that the *Maria Isabel* and other prizes taken previous to Lord Cochrane's arrival had all been properly inventoried and the proceeds had been satisfactorily divided. But in reference to the prizes *Geresana*, *Aguila*, *Vegona*, *Peruana*, and *Potrillo*, which had been captured by Lord Cochrane's squadron, only a superficial notice had been sent to the Government of their capture. No inventory of these vessels or of their cargoes had been sent. This he describes as an offence to the supreme authority ('un agravio de la autoridad suprema'). He also complains that Lord Cochrane had kept in the hands of his agent half of the money captured on the coast of Peru, and had paid the other half to the squadron. Lord Cochrane had sent in no proper account of the silver plate that had been captured. It was the Government that had been defrauded by his lordship, and not the takers of the prizes. 'De la plata de pina tomada tambien en esa epoca, aun no se ha dado cuenta' p. 38.

Zenteno,
p. 39.

justificada al Gobierno. I aqui tiene U.S. que quien verdaderamente se halla defraudado en su autoridad intereses es la supremacia i no los apresadores.'

pp. 37-40.

Zenteno goes on to say that the Government could not be responsible to the squadron for its share of prize-money until proper inventories and accounts had been received.

p. 42.

'El gobierno no puede ni debe por motivo alguno salir responsable a la escuadra de la parte de presa que reclamen o puedan reclamar de las que se hayan hecho, i de que no se ha dado razon circunstanciada a S.E. a ménos que no se le presenten cuentas legalizadas con los inventarios,' &c.

p. 39.

In the same letter Zenteno says that the foreign seamen, numbering but 170, were the only men who were loud in their complaints about the quality and the quantity of the provisions, and that if there was legitimate cause of complaint, it was due to neglect of duty on the part of the pursers and of other officials belonging to the squadron, who had been given repeated orders to examine the provisions when being embarked. As regards the rockets that had failed to act, their manufacture had been left entirely in the hands of the mechanics, who had come to Chili for the purpose of making them. The Government had no responsibility whatever with the rockets, except that of finding the enormous sums of money that they had cost.

p. 40.

p. 40.

It is impossible to read Zenteno's letters without recognising in him an able statesman who was surrounded on all sides by men who were very difficult to deal with. His policy was to oust the Spaniards completely from Peru, and not merely to plunder its coasts. In this he was completely successful before he left office. The fleet appears at this time to have been manned by about 1,000 Chilians, and about 170 English officers and seamen. Neither nationality could afford to dispense with the other.

Lord Cochrane made three unsuccessful attacks on Callao. He at first attempted a surprise, but failed. On March 22, 1819, he sent in an explosion vessel, which was sunk by the enemy's guns. On October 2 he tried a rocket attack, which also failed. The rockets burnt Colonel

Hinde and thirteen of his men severely, but did no harm to the enemy. Lord Cochrane and the Minister Zenteno are in flat contradiction as to the causes of this failure. On October 5 another explosion vessel was sent in, commanded by Lieutenant Margell. The Spaniards fired hot shot, the fuse was lit, and the vessel abandoned. Her explosion did no harm.

It is strange to note what a great reputation Lord Cochrane made for himself in connection with explosion vessels. It is one of the curiosities of history. None of his explosion vessels ever appear to have broken the skin of an enemy, or to have damaged any side but his own. At Aix Roads his explosion vessels caused a panic, but the only casualties actually caused by them occurred on board the *Caesar's* fireship.

See *supra*,
p. 26.

While on the Peruvian coast he seized 70,000 dollars on land at Patavilca, took 60,000 dollars out of a French vessel at Guambucho, and captured the *Aquila* and *Vigonia*. He also landed at Huacho, Pisco, and Paita. At the latter place some of his men got out of hand and sacked churches and private houses during the few hours that they were on shore. Lord Cochrane tried to make amends for this by giving the priests a thousand dollars, and by punishing the men; but it did harm to the Chilian cause. He also made other captures both on land and at sea.

Garcia
Reyes'
'History.'
'Refuta-
cion,' p. 5.

In the meantime the Spaniards had sent a squadron from Cadiz, consisting of two sail-of-the-line and a frigate, the *Prueba*, of 50 guns. One line-of-battle ship was found to be unseaworthy, and went no farther than the Equator; the other would have done better for herself had she also returned, for she foundered off Cape Horn. The *Prueba*, however, reached Peru in safety. To round Cape Horn is always a severe test for a sailing vessel. If she has a weak spot, Cape Horn will probably find it out.

'Narrative
of Services
i. 52.

Lord Cochrane determined to surprise the forts of Valdivia, a town well to the south of Valparaiso. On his way there he captured the brig *Potrillo* with 20,000 dollars on board.

i. 36.

With 250 men under the command of Major Beauchef,

'Memoirs
of General
Miller.'

who was a French officer, and whom he had borrowed from General Freire at Concepcion, and with some marines under Major Miller, he succeeded in his object. The enemy evacuated the town, and a provisional government was established. He then made an attempt on the island of Chiloe, but was repulsed with heavy loss. In all these operations he was well seconded by Major Miller, who was repeatedly wounded. During all the above-mentioned operations he had the advantage of excellent information, as the majority of the population had no love for the Spaniards.

'Narrative
of Services,'
i. 53.

Ibid.

Zenteno,
pp. 24, 40.

On February 27 Lord Cochrane returned to Valparaiso, and found the inhabitants of that place delighted at the unexpected news of the capture of Valdivia. In 'Narrative of Services' he says that Zenteno was furious at this capture, and had said that he deserved to 'lose his head for daring to attack such a place without instructions.' I cannot find any evidence in support of this statement, and Zenteno's letter of congratulation of February 22, 1820, makes it appear almost impossible that he could have said anything of the sort. This letter is couched in terms of the highest praise, and assures Lord Cochrane of the permanent gratitude of the Chilians. In the same letter of May 4, 1820, and to which I have previously referred, he quotes article 9 of the instructions given to Lord Cochrane, which gave him full liberty to act in accordance with the spirit of his instructions in case of unexpected occurrences, thus showing that Lord Cochrane had not disobeyed instructions by attacking Valdivia. If, for instance, Lord Cochrane had learnt that the garrison of Valdivia was weak and disaffected, such unexpected news would have justified an attempt at surprise.

p. 26.

On March 22 the President O'Higgins and Zenteno wrote to the senate requesting them to grant him one of the estates that had been recently confiscated as a reward for the capture of Valdivia. This was done, and it was not the fault of either of these statesmen if that estate was confiscated some years later. That was the act of another government in which they had no share, and took place

after Lord Cochrane had mixed himself up with the internal politics of the country.

The chief cause of quarrel between Lord Cochrane and Zenteno was very different. For some time the Chilians had been desirous of bringing the war to an end by sending an army to Peru whose presence would encourage the insurrectionary movement in the interior, capture Lima, and drive the Spaniards out of the country altogether. If this could be done, Peru would no longer be available as a base of operations against Chili, and Spanish ships would no longer be able to interfere with Chilian commerce. The Chilians wished to employ their fleet in convoying their transports, and thought it bad policy to make use of it merely for the purpose of harrying and plundering the unfortunate inhabitants of the coast. Zenteno, p. 47 *et seq.*

Lord Cochrane's own views are shown in a letter dated July 31, 1819, in which he tells the Government that if they cannot afford to reward the squadron for their services, at the same rate as in England and in other countries, 800 soldiers should be added to it, and that with this assistance it would be able to levy contributions on the real enemies of America in Peru, with the triple object of benefiting the Government of Chili by paying and rewarding the men employed in the sea service of the State, refitting the squadron, and then using it for other purposes. p. 52.

Esta fuerza con el auxilio de la escuadra, deberia emplearse en exigir contribuciones de los verdaderos enemigos de la America en el Peru ; con el triple objecto de beneficiar al Gobierno de Chile, pagar i premiar a los individuos empleados en el servicio maritimo del Estado i rehabilitar la escuadra para otros destinos despues.

The younger Zenteno describes this scheme as nothing but piracy under the shelter of the Chilian flag. 'Una pirateria al abrigo del papellon Chileno.' Had this scheme been carried out, the Peruvians would have hated the Chilians far more than the Spaniards. There had already been far too much of this landing, sacking, plundering, and re-embarking. p. 51. pp. 53-4.

Zenteno,
p. 57.

The Chilians raised an army of 4,000 men. Lord Cochrane on April 13, 1820, asked for the command of all the land and sea forces of Chili, and to have the fate of Peru and of all South America placed in his hands. 'Con tono altanero quiso imponermos el deber de confiar en sus solas manos la suerte del Peru, i talvez la de todo Sud America.' Zenteno insisted that Lord Cochrane should command the fleet only, and that he should take his orders from San Martin.

The name of the latter was known all over South America. He had crossed the Andes from Buenos Ayres, had defeated the Spaniards at Chacabuco, and in conjunction with O'Higgins had freed Chili from the Spanish yoke. The intended expedition was more political than military, and resembled that of William III more than that of William the Conqueror. Lord Cochrane's name was unknown in the interior. In Valdivia he might perhaps be known as a liberator, but in Peru he was only known as a plunderer, and by his nickname 'El Diablo.'

p. 61.

Zenteno on April 23, 1820, plainly told Lord Cochrane that it would not be difficult to find his successor, referring to an Englishman named Guise, who had already done good service for the Chilians. Guise and Spry, according to the younger Zenteno, were the only foreign officers in the squadron who had been loyal to Chili in disputes with Lord Cochrane. In consequence of this Lord Cochrane tried to drive them out of the Chilian service. Miller writes that

p. 62.

Miller's
'Memoirs,'
p. 273.

the squadron was divided and agitated by the conflicting parties of Cochrane and Guise. As these disputes do not, it would appear, reflect credit upon either of the parties the subject will pass without further remarks.

Guise became an admiral in the Chilian navy after Lord Cochrane left that coast.

'Narrative
of Services,'
i. 62.

There were also difficulties about payment of wages. Lord Cochrane says that they were paid up to July 16, but that no prize-money was paid. I think that it is clear that some of it at any rate had been previously paid. Though Lord Cochrane threatened repeatedly to resign,

Zenteno at length succeeded in getting him to submit ; and, as Garcia Reyes puts it, Zenteno at length succeeded, and the proud seaman, champing the bit of obedience, marched under his rival's orders.

'I aun consiguió al fin que el orgulloso marino, tascando el freno de la obediencia, marchase á las órdenes de su rival.' Zenteno, p. 61.

The squadron sailed on August 21. It consisted of twenty-four sail, sixteen of which were transports. They took with them arms and stores for an army of 15,000 men. San Martin landed his army at Pisco, but remained comparatively inactive. On October 28 he re-embarked and proceeded to Ancon, while Lord Cochrane and three ships kept watch on the Spanish squadron in Callao. p. 68.

Finding things rather dull, he decided to cut out the frigate *Esmeralda*. In my opinion it was the neatest thing that he ever did, and it was one of the chief causes of his restoration to the British navy in 1832. During the revolutionary and Napoleonic wars, cutting out brigs and schooners had been considered part of the ordinary duties of the British navy, and such small craft were generally left to the first lieutenant. Besides carrying much larger crews, frigates were much higher out of water than flush-decked vessels. In consequence of this, it was more difficult to get on board of them.

During the wars that took place between the years 1792 and 1814, I only know of one case in which a fully armed, fully equipped, fully manned, real live frigate was cut out by boats. In 1797 Captain Hamilton of the *Surprise* cut out the frigate *Hermione* from under the 200 guns of Puerto Cabello. The *Surprise* had a crew of 197 men, and of these 108 men in six boats took part in the attack. But as two boats with 43 men stopped behind to fight some gunboats, only 65 men took part in the actual boarding. Captain Hamilton led the boarders himself, as he felt that such an unusual enterprise could not be delegated to a junior.

James's
'Naval
History,'
ii. 361-5,
Chamier's
Edition.

The American frigate *Macedonian* and the British sloop *Hyperion* were at anchor in the harbour of Callao. In case of an attack, it had been agreed that they were to hoist

' Twenty
years in
South
America,'
Stevenson.

lights in a pre-arranged position so that they might not be fired on by the forts. Lord Cochrane had learnt from the American frigate what these lights were to be. At sundown on November 5, two of his three ships were pretending to chase some distant vessels. But the boats of the *Lautaro* and *Independencia* were alongside the *O'Higgins* on the off-shore side, where they could not be seen by the enemy. Lord Cochrane led the attacking party, which consisted of 240 men in 14 boats.

iii. 293.

' Narrative
of Services,'
i. 286.

i. 83 *et seq.*

' Twenty
Years in
South
America,'
iii. 298.

On board the *Esmeralda* two sentries appear to have been awake, the rest of the ship's company were asleep. Lord Cochrane shot one sentry, the other knocked him back into his boat. But by this time the British and the Chilians were swarming all over the ship. Guise, who had boarded on the other side, met Lord Cochrane on the quarter-deck. Lord Cochrane had been badly hurt in falling back into the boat, and had received a wound in the thigh. Once in full possession of the ship, the boarders got out of hand. The Chilians plundered the cabins, the British broke into the spirit room. The Spaniards opened fire from the batteries, and Guise, recognising that he would be unable to get the men to man the boats again, cut the cables and took the ship out of harbour. This was a great disappointment to Lord Cochrane, who had hoped to capture some more vessels, including a treasure ship which was said to have a million dollars on board. His original intention had been to capture the *Esmeralda* first, as she might have dismasted or sunk his other prizes and sunk his boats with her guns, had she not been disposed of previously.

The Spaniards believed that the *Macedonian* had helped the Chilians in their attack on the *Esmeralda*. Their indignation took a practical form. They massacred two of the officers of the *Macedonian* and fourteen of her men who landed shortly afterwards in the market boat to buy provisions.

The capture of the *Esmeralda* was a great victory for the Chilians. When a man-of-war captures another by means of her guns, both ships are generally in want of a thorough refit at a dockyard. But when a vessel is captured

by boarding, there are only a few bullet marks and scratches on her paint-work to be seen. If she can be manned by her captors, she counts twice over, just as a ratting member of Parliament counts two on a division.

The rest of the operations are comparatively uninteresting. The insurrection gained ground in every direction. On July 6, 1821, the Viceroy abandoned Lima, and on August 3 San Martin proclaimed himself Protector of Peru. On the 4th a stormy interview took place between him and Lord Cochrane. At the close of it Lord Cochrane immediately rode to Bocca Negra and got safely on board his ship.

'Narrative of Services,' i. 127.

'Twenty Years in South America,' iii. 353-5.

Lord Cochrane demanded from San Martin the pay and prize-money due to the squadron. The latter admitted some of his claims, and said that he was forming a fund to pay them. Delay, however, did not suit Lord Cochrane. San Martin in his 'Acusaciones' says that large quantities of plate had been received from private persons to be coined, and that these and other funds in cash had been placed for greater security on board ship at Ancon, so as to be safe from the enemy, if the result of the expected battle should prove unfavourable.

'Acusaciones,' p. 9.

Lord Cochrane determined to show San Martin that if he was master on land, he, Lord Cochrane, was master at sea. So he seized this treasure and transferred it to his own ship. What the total amounted to is not clear. San Martin in his 'Acusaciones' says that only 131,618 dollars out of more than 400,000 dollars was paid to the seamen. In the 'Vindicacion' Lord Cochrane says that the amount seized amounted to 205,000 dollars, that a great deal more than 131,618 dollars was paid to the officers and men, and that he himself had been paid nothing. In the 'Narrative of Services' he says that he returned all that belonged to private individuals, including 40,000 dollars belonging to the commissariat, and '285,000 dollars (not 205,000 dollars) remained, which was subsequently applied to the payment of one year's arrears.' What became of the surplus after the men had been paid, and who the unfortunate owners may have been, are matters which remain in dispute.

'Narrative of Services,' i. 157, 200.

'Vindicacion,' p. 38

See also Miller, i. 380-81.

'Vindicacion,' p. 38.

' Narrative
of Services,'
i. 200.

San Martin and Lord Cochrane flatly contradict one another. According to ' Narrative of Services,' Lord Cochrane never succeeded in getting his accounts passed by the Chilian Government, though one would have thought that he might have done so during his long stay in Chili after the naval warfare was practically over.

' Acusa-
ciones,'
p. 9.

' Vindica-
cion,' pp. 34
and 35.

' Acusa-
ciones,'
p. 9.

' Vindica-
cion,' p. 35.

To San Martin's remonstrances he replied on September 20, that he had acted as he had done to avoid greater evils, and that in allowing the sailors to take justice in their own hands by seizing the Government money ' he had prevented them from becoming real pirates.' In another letter, also of September 20, he said ' that the men were in a state of mutiny, and asks that the evil may be remedied.' This, says San Martin, means ' that he was no longer able to calm the storm that he himself had raised.' Lord Cochrane says that he only took the money of the Government and of custom-house contraband, and the only use he made of it was to pay one year's salary to the officers and men of the navy, and that he did not take a dollar for himself.

' Acusa-
ciones,'
p. 11.

San Martin says: ' His whole conduct since his arrival in Chili proves that self-interest was his sole motive, and that his anger with H.E. the Protector was principally caused by finding that his hopes of acquiring an immense fortune, by the indiscriminate sequestration of Spanish properties, had been frustrated.' ' Su disgusto con S.E. el Protector ha sido verse burlado en las esperanzas que concibió de adquirir una fortuna inmensa con el indistinto embargo de propiedades españolas en Lima.'

p. 7.

' Vindica-
cion,' p. 31.

San Martin further accuses Lord Cochrane of an atrocious calumny in spreading a report to the effect that he had said ' that the sailors would only be paid if Chili sold her fleet to Peru.' Lord Cochrane calls San Martin's denial an untruth.

pp. 49, 54.

Lord Cochrane had other means of raising money besides seizures. In the ' Vindicacion' he admits having allowed vessels to leave Callao during the blockade on paying a percentage, and of allowing prisoners to purchase their liberty. He asserts, however, that this was an act

of charity to individuals, and that he spent the money on public service.

He also gave permission to merchant vessels at various ports to disembark their cargoes on payment of 18 per cent. of the value of the original bills of lading. One of these ships was the *Admiral Cockburn*, from which he took naval stores instead of cash. The percentage demanded from that ship amounted to 21,000 dollars.

'Vindicacion,' p. 54.

pp. 27, 49.

'Acusaciones,' p. 9.

San Martin goes on to say that the frigate bearing his name had been wrecked at Chorillos through Lord Cochrane's anxiety to sell the flour which it carried, and for which a contract had been made with Don Jose Arismendi. In the 'Vindicacion' Lord Cochrane makes the following strange defence :—

p. 14.

If as you say an agreement about the sale of the corn was made beforehand with Don Jose Arismendi, but which I cannot remember, I renounce the profits of that contract, in favour of an act of charity, for which we made the sacrifice while you gained the credit. To assert that I lost a ship through my greed, when it might have been attributed to my charity, is not the least iniquity of your charges.

'Vindicacion,' p. 48.

In the 'Narrative of Services' he has the audacity to accuse San Martin of being the cause of the loss of this ship. Had it been true he would have accused him of it as directly in the 'Vindicacion' as in 'Narrative of Services.' In the latter work he writes :

The city being in a state of famine, General San Martin directed that the wheat, of which there were upwards of two thousand fanegas, should be landed at the Chorillos, free of duty. As the *San Martin* was deeply laden, I objected to this from the dangerous nature of the anchorage, but more especially that the only anchor on board was made from the remains of two broken anchors lashed together ; this objection was nevertheless overruled, and as I had anticipated she went ashore at Chorillos, where, from the heavy swell which set in, she became a total wreck.

'Narrative of Services,' i. 121.

There is no mention of this objection or of the anticipation in the 'Vindicacion.'

'Acusaciones,'
p. 3.

San Martin also accuses Lord Cochrane of sending to Guayaquil rigging and stores belonging to the *Esmeralda* to be sold, and he further says that—

In another note Lord Cochrane declares that he obtained possession of about 115,526 dollars during the expedition, yet the preceding items (whose total amounts to 76,000 dollars) contain the only account he has given of the employment of these sums.

San Martin says that—

On the 9th of August Lord Cochrane wrote to the Governor of Callao saying literally what follows :—

p. 15.

H.E. General-in-Chief Don José de San Martin has instructed me that he proposed to your Lordship that should those forts surrender with the whole of the goods deposited in them, their owners would be allowed to remove them to the country they wished, as H.B.M. corvette *Conway* is just now in Chorillos, I offer this opportunity to your Lordship of carrying it into effect, you paying a third part of the amount that would be put on ship board to the person I would designate, in which case I will send an advice boat asking the corvette to sail for this port, if your Lordship's answer is favourable.

In any case should the half be surrendered, I offer to find the ships necessary for its removal, paying the usual price of transport for any country out of Peru and Chili with the sole condition that at the time of surrendering, the forts which your Lordship occupies should be burnt down, this being necessary for the guarantee which I promise you on my word of honour, and if any other security should be necessary, your Excellency could suggest it to me. God guard, etc.

Callao Bay, August 9th, 1821.

The Governor of Callao answered this wicked letter in the following manner :—

YOUR EX.—In the whole correspondence that has taken place up to the present, between Don José de San Martin and this Government, there is nothing that could refer to the proposal which your Ex. makes to me in your official letter of August 9th. God guard, etc. August 14th, 1821. JOSÉ DE LA MAR.

To H.E. Lord Cochrane, Chilian Admiral.

Lord Cochrane in his 'Vindicacion' admits that he 'offered the governor of the town his protection and the safe conveyance to any country of two-thirds of the treasure contained in the forts, on condition that the remainder and the possession of the forts should be delivered to the Chilian navy.' He gives, however, no reason whatever for his having conducted this negotiation in the name of San Martin without asking his consent.

'Vindicacion,' p. 50.

San Martin also complains that Lord Cochrane's pillages on the coast, and acts of piracy on the high seas, had caused much discredit to the cause and had created many difficulties with foreign nations.

'Acusaciones,' p. 16.

The Spanish General Cantarac afterwards entered the forts at Callao and removed the treasure, which in the 'Narrative of Services' we are told amounted to thirty millions of dollars, equal to about £6,000,000. Lord Cochrane in his 'Vindicacion' attacks San Martin for not fighting Cantarac, and calls him a coward. Now San Martin had proved his courage on other battlefields, and if he did not fight it was probably because he knew better than Lord Cochrane of what raw materials his army was composed. Lord Cochrane was accustomed to fight on shore in company with Royal Marines and British seamen trained by himself. San Martin was not. It is clear that the greater part of San Martin's army at this time must have consisted of newly raised Peruvians, men who had never been allowed by the Spaniards to train themselves to the use of arms. Besides, this expedition was more political than military, and it is quite possible that San Martin no more wanted to fight a pitched battle than William III did when on his way from Torbay to London. Lord Cochrane wanted dollars; San Martin wanted power. Later on, it will be seen how a Greek army was destroyed in consequence of following Lord Cochrane's rash advice.

'Narrative of Services,' i. 149, 150.

'Vindicacion,' p. 61 *et seq.*

After the proceedings at Ancon, San Martin would not give the Chilian squadron any assistance towards a necessary refit. So Lord Cochrane sailed for the Mexican coast and spent the month of January 1822 in the harbour of Acapulco. On his return to Guayaquil, on March 13, he found the

'Narrative of Services,' i. 168 *et seq.*

former Spanish frigate *Venganza* under Peruvian colours. Spanish seamen had not distinguished themselves during this war. They had been passive resisters and had shown no enterprise. They now, however, surpassed themselves. On receiving a year's pay they had handed over to San Martin the frigates *Prueba* and *Venganza*, which were the only Spanish men-of-war that remained on the station. This purchase by San Martin was considered to be poaching by Lord Cochrane and not to be endured. While in the service of other countries, Lord Cochrane appears to have held a sort of Monroe doctrine of his own. He seems to have considered that everything on salt water belonged to him absolutely, and on land too if he could get hold of it. So he seized the *Venganza*. But as she was not ready for sea, he had to leave her behind him at Guayaquil, after having extorted a document on which he attempted to found a claim for 40,000 dollars.

'Twenty
Years in
South
America.'

'Narrative
of Services,'
i. 181.

Lord Cochrane reached Valparaiso on June 13, 1822. On October 12 San Martin arrived, having been driven out of Peru by Bolivar, a rival Liberator. San Martin was received at Valparaiso with the honours due to a sovereign prince, and was installed in the palace. The unfortunate Spaniards, and the loyal colonists of Peru appear to have suffered considerably during these quarrels. In the 'Vindicacion' Lord Cochrane says that 'in his opinion half the property of the Spaniards should have been taken, and the remainder should have been left,' but that San Martin sold the Spaniards letters of citizenship, and then proceeded to rob and exile them.

'Vindica-
cion,' p. 40.

I shall not trouble the reader with any further extracts from the 'Acusaciones' or 'Vindicacion.' There are many more 'Acusaciones' partly answered by Lord Cochrane, but I think I should only weary the reader by reprinting them. They show San Martin¹ as a proud and ambitious

See also
Miller's
'Memoirs,'
i. 423-6.

¹ Miller says of him: 'Having redeemed his pledge of allowing the Peruvians to assemble in congress, to form a government conformable with the wishes of the people, San Martin, emulating the example of Washington, retired into private life. The only riches he has acquired is the glory resulting from his great and patriotic labours during ten years of incessant exertion both in the cabinet and in the field.'

man, somewhat bombastic, desirous of power, and Lord Cochrane as chafing under restraint of any kind, more especially when it interfered with his accumulation of wealth. I do not wish it to be understood that I take the side of San Martin in all his quarrels with Lord Cochrane, but I want to show that there are Zenteno and San Martin sides to these questions.

Although Lord Cochrane remained at Valparaiso from June 13, 1822, until the middle of January 1823, he never was able to settle his accounts with Chili to the satisfaction of either party. In 1845 the Chilian Government granted him the sum of £6,000. In 1842 that Government granted the full pay of his rank to General San Martin for life. In 1857 they did the same for Vice-Admiral Lord Cochrane. The address of the President of the Republic asking for the latter grant is printed in the appendix to the 'Narrative of Services.' As it contains three historical mistakes, I am inclined to think that it must have been based upon a petition of Lord Cochrane's.

'Narrative.
of Ser-
vices,' i.
276, 277,
282.

i. 287.

Lord Cochrane's services to Chili were not confined to what he did when actually fighting Spaniards. They had the benefit of his knowledge of refitting and repairing ships without much assistance from dockyards. Our experience in these matters, gained in long blockades during the French war, was unequalled by that of any other nation. Lord Cochrane knew all that had been learnt by our seamen, and was himself a man of infinite resource.

The Chilian navy will probably always contain an *Esmeralda*. The *Almirante Cochrane*, the *San Martin*, the *Blanco Encelada*, and the *Zenteno* continue to figure on its navy lists.

In January 1823 Lord Cochrane quitted the Chilian service and entered that of Brazil.

CHAPTER II

BRAZIL

It now becomes necessary to give some short account of Lord Cochrane's proceedings in Brazil. Unfortunately the only authorities that I have been able to find are 'Narrative of Services in Chili, Peru, and Brazil,' some other Earp-Jackson-Dundonald writings, and the condensation of them that has been made by the Hon. J. W. Fortescue.

Lords'
Committee
for Privi-
leges, 1862.
See Report
of Jackson's
Evidence,
taken by
Commission
on July 30
and 31,
1862, p 32.

Lords'
Committee
for Privi-
leges, Mr.
Earp's
letters.

Set out in
'Report of
Jackson's
Evidence.'

William Jackson was Lord Cochrane's secretary while in Brazil. He told the Commissioners that he had held the rank of major, and that he had acted as paymaster when on board ship in Brazil. With such a secretary to back him up, one does not wonder at Lord Cochrane's getting into difficulties about his accounts. Mr. Jackson supplied Mr. Earp with information for his books, and kept a journal, whole pages of which are transferred to 'Narrative of Services.' That book was avowedly written for the purpose of supporting Lord Cochrane's pecuniary claims. Mr. Jackson considered that he also had claims against Brazil. It is, therefore, a matter for regret that there are apparently no contemporary documents available for the purpose of checking the statements contained in the above works.

There never appears to have been any fighting, but only a great deal of plundering on the Brazilian coasts. I cannot find that there were ever any casualties on board of any of the ships under Lord Cochrane's orders. None are mentioned as having occurred on board of the Portuguese vessels, so I presume that, if there were any, there were very few. It was simply a case of wolves chasing sheep. The real struggle in these campaigns was between Lord Cochrane and the Brazilian prize-courts.

When Lord Cochrane arrived at Brazil on March 13, 1823, he found that the authority of Don Pedro, the Constitutional Emperor of Brazil, was acknowledged at Rio Janeiro and in the southern provinces of that country, but that the towns of Bahia, Maranhão, and Pará in the north were still held by Portuguese troops. Some of the officers and men who had served in Chili accompanied Lord Cochrane to Brazil. After much discussion as to remuneration, prize-money, &c., Lord Cochrane and his followers entered the Brazilian service, much after the fashion of a grand company of *condottieri* in the later Middle Ages.

On April 3 we are told that Lord Cochrane when off Bahia with his one line-of-battle ship, the *Pedro Primiero*, two frigates, a corvette, and a brig, met a Portuguese squadron consisting of a line-of-battle ship, five frigates, a brig, and a schooner. Some firing and manœuvring took place. Mr. Fortescue remarks: 'It is lamentable to recall that this, Lord Cochrane's only fleet action, was hardly opened before it was abruptly closed.' 'Narrative of Services' says: 'In this affair no lives were lost.'

'Narrative of Services,' ii. 9-21.

Dundonald, p. 146.

'Narrative of Services,' ii. 28.

Lord Cochrane complained that his ships were very badly found, that they had not obeyed his signals, and that some of his men sympathised with the Portuguese. He set to work to remedy these defects; prepared some fire-ships, and then took up a position off Bahia. On July 2 the Portuguese evacuated that place, taking with them, not only the garrison but a large number of merchant-ships filled with Portuguese families.

'Narrative of Services' describes the Portuguese squadron as consisting of one line-of-battle ship and twelve smaller men-of-war, and between sixty and seventy merchant vessels and transports full of troops. Lord Cochrane had with him the *Pedro Primiero*, two frigates, and a brig. The Portuguese soon fell into confusion, and many of the troop-ships and merchantmen were seized. When a prize was boarded, her water-casks were stove in, and her main and mizen masts were cut away, and the arms thrown over-board. She was then given orders to make the best of a fair wind back to Bahia. It was not intended to weaken

ii. 52.

Ibid.

' Narrative
of Services,'
ii. 53.

p. 54.

p. 57.

p. 110.

p. 56.

the crews of the pursuing ships by detaching prize-crews. The squadron which should have protected the convoy did on one occasion give chase to the *Pedro* and fired a harmless broadside at her. This affair appears to have been the nearest approach to fighting that took place during this war. Some of the Portuguese tried to make for Maranh, but the *Pedro* headed them off, captured one of them and dispersed the rest. On the 16th, at 3 A.M., the *Pedro* fired a broadside at a frigate that did not return the fire. Then the mainsail of the *Pedro* split, and she gave up the chase. Captain Taylor of the frigate *Nitheroy* pursued the enemy to the Tagus, and burnt four vessels there, under the guns of a line-of-battle ship. In his despatch to the Minister of Marine, Lord Cochrane describes the captured vessels as resembling ships of-war.

p. 108.

On giving up the chase, Lord Cochrane proceeded to Maranh in the *Pedro*. He declared that he had a fleet and army outside, and summoned the Governor and the Junta to surrender at once. Two days after his arrival the inhabitants declared their independence, and it was arranged that the garrison should either return to Portugal or remain as private individuals. He sent a brig to summon Para in a similar manner. Captain Grenfell who commanded her was equally successful, not only in changing the Government at Para, but in securing a Portuguese frigate that had just been launched, besides some other vessels.

pp. 79-82.

p. 110.

For these services Lord Cochrane was made Marquis of Maranh. So far he had been completely successful. But the real struggle was now about to begin. Under an Imperial decree of December 11, 1822, he claimed not only all the money found in the treasury of the captured places, but all the money found in the customs houses, all Government stores, and other property that had been seized, worth several millions of dollars, including outstanding debts—that is bills given at the customs house in payment for goods not yet disposed of. The squadron had also seized 120 vessels, some of them with valuable cargoes, and there was a quantity of merchandise in the customs houses.

But the Brazilian prize-courts held views of their own. Possibly they considered that the Emperor's decree was unconstitutional. Or they may have been in sympathy with the Portuguese as suggested in the 'Narrative of Services.' At any rate, they refused to condemn most of his prizes. Captain Taylor of the *Nietheroy* was sentenced to six months' imprisonment, and to forfeit double the amount of his prize-money, on behalf of the owners of the vessels destroyed in the Tagus. Captain Grenfell had brought from Para 40,000 dollars, as ransom for prizes that he had taken. His ship was boarded in his absence, and the money was removed to the treasury. He was then tried, but acquitted for his conduct to the junta at Para. The 'Narrative of Services' is my sole authority for the above statements.

'Narrative
of Services
ii. p. 110.

I can, however, quite understand that there was a Brazilian as well as a Cochrane point of view of these questions. I take it that the merchants and shipowners of Northern Brazil, who had joyfully transferred their allegiance to the Emperor, were much annoyed and surprised at finding their property confiscated, because their vessels were unprovided with any but Portuguese papers, when they had had no opportunity of obtaining Brazilian documents. Also, that the local governments or juntas may have considered that there was a distinction between *their* money and that of the Portuguese Government.

While these prize-court disputes were being thrashed out, the northern provinces of Brazil were in a state of ferment. There was a revolution going on at Pernambuco. The squadron would not sail without payment. On July 24, 1824, 200,000 dollars were paid to the secretary, Mr. Jackson, who with Captain Crosbie brought the money on board the *Pedro*. According to Mr. Jackson, the greater part of this money was paid to officers and men.

p. 155.

Next year there were disturbances at Maranhão. On March 11, 1825, Lord Cochrane declared martial law at that place and forced the junta of that place to pay him one-fourth of what he considered due to him and to the squadron. He then shifted his flag to the frigate *Piranga*. According to Mr. Jackson's journal, the last payment was

p. 235.

pp. 301-3.

received from the treasury at Maranham on May 14. The *Piranga* sailed for Spithead on the 19th of that month; arrived there on June 26.

'Narrative
of Services,'
ii. 248, 249.

In the 'Narrative of Services' he is represented to have gone to sea for the benefit of his health, and with the intention of returning to Rio, but it is said that he was unable to do so on account of stress of weather and shortness of provisions. Either he was laughing at the Brazilian Government when he made such an excuse, or he made it from sheer habit of deception. With all his faults, Lord Cochrane was a thorough seaman, and knew as well as any one how to take advantage of a slant of wind. If he sailed from Maranham and arrived at Spithead after a passage of thirty-nine days, it was because he meant to go there for reasons of his own. In passing the Azores he overtook a brig bound for Gibraltar, *that had left Maranham ten days before the 'Piranga,'* so that it is clear that he did his best to make a quick passage.

p. 250.

p. 253.

'Life of
Lord Coch-
rane,' i.
319, 325.

I have no doubt that the real reason of his return to England was to facilitate his arrangements for obtaining the command of the Greek Navy. While on the spot he could make a better bargain. His friends in England, moreover, had urged him to enter the Greek service before he left South America. He did not wish to fall between two stools, and he therefore did not intend to give up his Brazilian appointment until matters had been finally settled.

p. 325.

The terms that he accepted from the Greek deputies, John Orlando and Alfred Luriottis, were £37,000 down, and £20,000 on the completion of his service, to be paid out of the new Greek loan of two millions sterling. These arrangements were practically completed on August 16, but we are told that he had not finally pledged himself, because he was still in the Brazilian service.

'Narrative
of Services,'
ii. 264.

In the meantime there were difficulties about the *Piranga*. Lord Cochrane had given himself leave to go to Scotland at the end of August, and did not return to London until the beginning of November. The Brazilian envoy in London wished him to give up possession at once. He was appar-

ently afraid of Lord Cochrane's selling or pledging the ship to satisfy his claims. On November 7 the Brazilian envoy wrote to Lieutenant Shepherd, who had been left in command, declining to furnish the frigate with anything until the officers and men 'cast off all subordination to the Marquis of Maranham.' On or about November 12 Lord Cochrane gave up the command.

A report was afterwards made to the Brazilian Government which, while acknowledging Lord Cochrane's services, says: 'It is impossible to conceal that unqualified and arbitrary acts of the most audacious daring were committed by him and by the ships under his command, occasioning to the National Treasury enormous losses, particularly by the heavy indemnification of an infinite number of bad prizes, which it was obliged to satisfy.'

'Narrative of Services,'
ii. 276.

This report also states that the gross value of the prizes amounted to 521,315 dollars, in which the Admiral was entitled to share. The same report says that 348,238 dollars, including 217,659 dollars received from the Junta at Maranham at different times, of which 108,736 dollars was paid under the title of indemnification for prizes, had been paid to the Admiral and that he was bound to give an account of it. The second volume of the 'Narrative of Services' was apparently published in answer to this report. It prints extracts from Mr. Jackson's journal and other documents to show that payments out of these sums had been made to the officers and crews of the squadron.

p. 292.

p. 302.

On April 10 the following entry appears in the journal. 'A decree arrives by the *Guarani* from the Imperial Government, directing the Interim President that no money shall be paid to the squadron on account of the taking on Maranham.' Lord Cochrane did not allow this decree to be obeyed, and more money was paid on April 26 and on May 18. Then he sailed for Portsmouth.

Ibid.

Lord Cochrane's Brazilian claims were taken up by the eleventh Lord Dundonald in the Life of his father, written by him and Mr. Fox Bourne. In consequence of this and of some other proceedings, a further payment was made to Lord Cochrane's heirs *circa* 1877, and Mr. Earp's

Times,
August 1,
1878, p. 11.

'Narrative
of Services,'
ii. 302.

representatives, after a law-suit, received 10 per cent. of this sum from the present earl. It does not appear that any of this money was paid to Mr. Jackson's representatives. From entries in his journal it seems that in 1825 he received half per cent. of the monies he paid to officers and men in addition to his monthly pay.

I am aware that this account of Lord Cochrane's services in Brazil is very imperfect, but if so, it is because, in the absence of other authorities, I have had to base it on the Earp-Jackson-Dundonald writings, and on quotations and translations of such documents as their authors thought wise to print. It is a pity that the whole of Mr. Jackson's journal is not available instead of extracts only.

Speech
before Com-
mittee of
Privileges.

In several places Lord Dundonald complains that he was out of pocket by his services. If so, one wonders where his money came from. He was pecuniarily ruined when he left England in 1818. On June 9, 1863, Sir Fitzroy Kelly, who was Lady Dundonald's counsel, described him as having 'returned covered with glory from South America, he reached home abounding in wealth.' And on another occasion he said: 'After the return from South America, from which country he had come back loaded with wealth.'

CHAPTER III

GREECE

I HAVE pointed out what immense opportunities Lord Cochrane had of making money, with an unscrupulous secretary to back him. Wherever he went he appears to have been unceasingly involved in money squabbles.

If other historians had not already written accounts of the war between Greece and Turkey we should probably have been told by the writer of the 'Life of Lord Cochrane' that not only South America, but that Greece also, owed its independence solely to his exertions.

But Finlay, Gordon, and Tricoupes had already been before him. Of course they are all said to be wrong in their facts whenever they disagree with Lord Cochrane. For instance, in referring to Finlay's History we are told :

Mr. Finlay served as a volunteer in Greece under Captain Abney Hastings. His work is certainly the best on the subject, though we shall in later pages have to differ widely from its strictures on Lord Cochrane's motives and action. But our complaints will be less against his history than against two other leading ones,—General Gordon's 'History of the Greek Revolution' (1832) and Mr. Tricoupes' 'History' (1853-6), which is not very much more than a paraphrase of Gordon's work.

Finlay, 'History of Greek Revolution,' ii. 196; and 'Life of Lord Cochrane,' i. 292 n.
'Life of Lord Cochrane,' i. 292.

Finlay's account of Lord Cochrane's engagement to serve Greece is as follows :—

The grandest job of the English Philhellenes was purchasing the services of Lord Cochrane to command a fleet for the sum of £57,000 and setting apart £150,000 to build the fleet he was hired to command. Lord Cochrane was engaged to act as a Greek Admiral in the autumn of 1825. He went to reside at Brussels

Finlay, 155.

while the fleet was building, and arrived in Greece in the month of March 1827, as has already been mentioned, before any of the steamships of his expedition. Indeed the first vessel which was commenced at London by his orders, did not arrive in Greece until after the battle of Navarin.

The grandson's edition of 1890 prudently abstains from all mention of the price of Lord Cochrane's services to the Greeks, and also omits to mention the subsequent disputes concerning it. In this edition, however (p. 520 *et seq.*), we are told that he went to Brussels not only to avoid the Foreign Enlistment Act, but also to avoid litigation in connection with his South American captures. When it suited him, however, he came to England boldly enough.

'Life of
Lord Coch-
rane,' i.
328-32.

On May 8, 1826, he left Flushing in the schooner yacht *Unicorn* of 158 tons, landed at Weymouth, hurried up to London, inspected the steamers that were being built at Mr. Galloway's works at Greenwich, rejoined the *Unicorn* on May 20 at Dartford, yachted round the coasts of England and Ireland, touching at Falmouth and at Bantry Bay. He then sailed about the Mediterranean, touching at Messina, Malta, and Marseilles. On December 8 he went to Geneva for a week or two to be introduced to the Swiss Philhellenes. On February 14 he left Marseilles, touched at St. Tropez, reached Paros, and entered upon his service in Greek waters on March 19, 1827. He had taken ten months to go from Flushing to Greece—a record voyage. Yet no man knew better how to make a quick passage when he chose to do so. Still, it would have been far better for Greece had he never come out at all.

Finlay, ii.
137; and
'Life of
Lord Coch-
rane,' i.
367 *et seq.*

Finlay says of him: 'He had been wandering about the Mediterranean in a fine English yacht, purchased for him out of the proceeds of the loan, in order to accelerate his arrival in Greece, ever since the month of June 1826.'

In the 'Life of Lord Cochrane' an attempt is made to prove that the above quoted passage is untrue. But the dates of his movements, as taken from the 'Life' itself, certainly appear to support Mr. Finlay's account of his proceedings. His delays are attributed to Mr. Galloway, the engineer who had contracted to build the steamers.

Lord Cochrane even goes so far as to say that 'he did not know till afterwards that Galloway having private connections with the Pasha of Egypt never intended to do the work he was called upon to do.' No authority whatever is given for this bold assertion. In 1827 the Greek deputy, A. Luriottis, printed the correspondence respecting the Greek steam vessels. In 1871 Mr. R. H. Galloway, wishing to vindicate his father's memory, published a pamphlet entitled 'Refutation of calumnious statements concerning Alexander Galloway, contained in the Earl of Dundonald's book entitled "Life of Lord Cochrane."'

'Life of Lord Cochrane,' i. 333.

The grandson, in his 1890 edition, wisely omits all the attacks on Mr. Galloway, but the Hon. J. W. Fortescue says: 'The contractor was in the pay of Ibrahim Pasha, the Commander-in-Chief of the Turkish forces in Greece, and had no intention of doing anything for the cause of Greece, beyond taking a share of the new loan.' The remarks about taking a share of the new loan appear to me to be more applicable to Lord Cochrane than to Mr. Galloway.

Fortescue's 'Dundonald,' p. 179.

Lord Cochrane hoisted his flag on board the *Hellas*, an American-built frigate, one of the largest then afloat. She carried 64 guns, having 32-pounders on her main deck, and 42-pounder carronades on her upper deck. His first work as commander of the naval forces of Greece had the effect of causing the destruction of the main portion of the Greek army. The Turks were blockading the Acropolis of Athens, which they hoped to reduce by famine. A Greek army under General Church (afterwards known as Sir Richard Church) and Karaïskakes was endeavouring to relieve it. We are told in the 'Life of Lord Cochrane' that Karaïskakes made unreasonable demands for provisions and ammunition which it was no part of his duty to supply. Tricoupes, Gordon, Finlay, and all the other authorities, say that Lord Cochrane still had £20,000; but the 'Life' says that he had only been supplied with £8,000, most of which had already been spent. I do not pretend to decide which was the correct account at this distance of time. Fabvier, who commanded in the Acropolis, was afterwards said to have

'Life of Lord Cochrane,' ii. 47.

provisions for four months, but the leaders of the relieving forces believed that he had very much less.

Stanley-Lane-Poole writes :—

The English Historical Review, July 1890, p. 504; Stanley-Lane-Poole's articles on Sir Richard Church.

Church was no coward nor no Fabius neither, but he saw the hopelessness of the hasty Admiral's tactics, and, supported by all the Greek Commanders, he tried to wait for his opportunity instead of forcing fortune. But Cochrane was resolute; let them act he said, or off he would instantly sail and leave the whole force of nearly 10,000 men to starve or be massacred; and thus it happened that at two councils of war, held in the early days of May, the fatal forward movement was planned and agreed to.

Tricoupes, v. 66.

Tricoupes also refers to 'the arrogance with which Cochrane forced his rash scheme upon the council and his habitual rejoinder to every argument, "that he would take off ships and money and leave Greece to perish."'

'Life of Lord Cochrane,' ii. 72.

Lord Cochrane's plan of attack might have succeeded had the Greek army been composed of well-armed regular troops, or even of Anglo-Chilenos drilled and led by such men as Major Miller. But it was a mere collection of men with muskets, unprovided with bayonets or weapons for close fighting. They knew their own weakness, and their leaders knew it also. Yet Lord Cochrane insisted upon the attack being made, and afterwards blamed the Greeks for their failure in no measured terms. He complained that they stopped on their way to make little entrenchments called *tamburias*, instead of going straight on.

The Greeks were defeated. Their defeat became a rout. Lord Cochrane himself was driven with other fugitives into the sea. There they remained until some of them were rescued by boats from the squadron. Lord Cochrane owed his safety to swimming and to his great height. Shorter men were killed or drowned. He had gone on shore to take credit for the victory he had hoped for. How grim he must have felt, up to his neck in water, contemplating the massacre caused by his own obstinacy!

Lord Cochrane then proceeded to try to organise the Greek navy. He had succeeded in amalgamating Anglo-Chileno crews, but with the Greeks he failed utterly. His

failure was no doubt partly attributable to the fact that the Greeks considered him responsible for their disaster at Athens. The Greeks thoroughly understood the handling of small vessels, but were utterly lost on board a large heavily-gunned ship like the *Hellas*. His condemnation of the whole of his crews as cowards is absurd. The 'Life of Lord Cochrane' says that 'Canaris alone among the Greeks was brave.' In disproof of this I give a summary of the attacks made by Greek fire-ships.

'Life of Lord Cochrane,' ii. 94.

On June 19, 1822, at Psara, Canaris attacked the Turkish fleet with two fire-ships, manned by 2 officers and 32 men. He killed their Admiral and burnt his flag-ship with 2,300 troops on board.

Alison's 'History of Europe, 1815-52,' Chapter on 'Greek Revolution,' iii. 142 *et seq.*

On November 9, 1823, he burnt a two-decked ship with 1,600 men on board. The Turkish fleet cut their cables, and two of their frigates were wrecked. The rest of the fleet ran for the Dardanelles, leaving the command of the sea to the Greeks, none of whose vessels mounted more than 20 guns.

On August 15, 1824, Canaris took a fire-ship into the middle of the enemy's fleet, threw it into confusion, dispersing their ships.

On another occasion he grappled a frigate of 54 guns with 600 men on board. He burnt her and two other vessels. Samos was in consequence relieved.

Miaulis also, when off Samos, set 2 frigates on fire and drove the Turkish fleet back to the Dardanelles. On another occasion he burnt 1 frigate, 12 smaller vessels, and 15 transports. On the evening of May 13, 1825, when off Modon, Miaulis sent in 6 fire-ships. They burnt the *Asia* of 54 guns, 2 corvettes, 3 brigs, and 20 transports.

On May 24, 1825, Saktouri attacked a Turkish fleet with fire-ships. They burnt a 66-gun ship with 800 men on board. A 34-gun ship and 2 corvettes shared her fate.

On September 24, 1824, Papantoni burnt the Tunisian Admiral's flagship of 44 guns and 750 men. Sometimes the Greeks attacked by daylight on board disguised ships carrying Turkish colours. They nearly always grappled the enemy's ships before abandoning their fire-ships. Most

Life of
Lord Coch-
rane,' ii.
112.

of the Turkish men-of-war carried troops, which accounts for the large number of men on board.

Compared with all these exploits those of Aix Roads sink into insignificance. When at that place Lord Cochrane had caused a panic, but had actually hurt very few of the enemy. On August 1 the *Hellas* captured a Turkish corvette, the only service he appears to have rendered to the cause of Greece. In the spring of 1826 diplomacy had set to work. It moved slowly, and it was not until the autumn of 1827 that the allied fleets of England, France, and Russia found themselves blockading Ibrahim Pasha's fleet at Navarino. The situation became strained. On October 20 the guns went off of themselves, the Turkish fleet was destroyed, and the cause of Greece was saved.

ii. 145.

The three Admirals who commanded the fleets of the mediating powers published a letter, dated October 24, in which they spoke disrespectfully of the Greek fleet, 'making no distinction between them and the mere pirates.' Though the most important part of his life had been spent in making questionable seizures, bordering on piracy, Lord Cochrane resented this, and replied denying that the ships under his orders had committed acts of piracy, or that they had captured neutral vessels, except when breaking a blockade. I cannot find that he ever received satisfactory answers to any of these remonstrances. Some of the Greek vessels had undoubtedly been guilty of piracy, but it would not be fair to make Lord Cochrane responsible for all their proceedings. The Greeks constantly disobeyed orders, and he had not sufficient means of enforcing discipline.

ii. 170.

On January 10, 1828, he left Greece in the *Unicorn*, and reached Portsmouth on February 11. The Greek Deputy, Andreas Luriottis, wrote to Sir Francis Burdett and asked for the return of the £37,000 already paid to Lord Cochrane on the ground that he had broken his contract by leaving Greece. He indignantly replied, accusing the Greek Government of having assumed his powers, of having interfered with the distribution of armed vessels, and of having covered the seas with piratical craft. Altogether a very pretty quarrel. He however went back to Greece

at the end of September. As his offer of further service was not accepted by President Capo d'Istrias, he returned to England. He is said to have generously surrendered the £20,000 that he was to have received on the completion of his work. But I do not find that he ever had a chance of getting it after he had been asked to return the £37,000.

PART IV

LORD COCHRANE RE-INSTATED IN THE NAVY

AFTER his sea-service under foreign flags was over Lord Cochrane appears to have spent his time in scientific pursuits and experiments, and in drawing up deceptive accounts of the principal events of his life. In this latter portion of his work he met with considerable success. As the memory of these events faded away, and when the people connected with them died out, a younger generation arose who believed in his reiterated statements. Besides, it was not the business of anyone in particular to contradict them.

On June 4, 1828, Lord Cochrane addressed a memorial to the Duke of Clarence, then Lord High Admiral, asking for reinstatement. It contains no new arguments, but the old ones are repeated in a more suitable tone than in his former appeals, and there is a complete absence of those wild charges against all concerned in the prosecution, and against his judge, which has necessitated the publication of Mr. Atlay's book and the *résumé* of the case in this book.

On June 14 he received the following answer: 'The King's Cabinet cannot comply with the prayer of the memorial.'

In 1830 a fresh pamphlet was drawn up entitled 'Review of the Case of Lord Cochrane.' It was forwarded to King William IV on December 10, 1830, accompanied by a short memorial in the form of a letter which is added as a preface in some of the printed copies.

It does not appear to have been published, and there is no name of any publisher or printer attached to it. Although it is written with greater ability than its predecessors, the arguments used therein were apparently not good

enough to be exposed to the fresh breezes of publicity at a time when many persons recollected the details of the trial.

The writer, throughout, treats the evidence given in the affidavits made both before and after the trial as of equal weight to that which had been tested by cross-examination.

This 1830 pamphlet deals at length with the story of De Berenger's visit, and as to how the bank notes found in De Berenger's possession reached him, on much the same lines as was done in the 'Letter to Lord Ellenborough.'

The case set up in it for Lord Cochrane differs *in toto* from that presented by his counsel at the trial, and from the tissue of contradictions and inaccuracies contained in the 'Autobiography of a Seaman,' is also absolutely conclusive as to the futility of the gross charges brought against Lord Ellenborough.

Atlay,
pp. 284,
285.

The foundation of the book is the mismanagement of Lord Cochrane's case by his legal advisers, solicitors, and Counsel alike, and especially the wrong done to him by uniting his defence with that of Cochrane Johnstone.

p. 285.

Mr. Atlay's book gives several quotations from the 1830 pamphlet for the purpose of proving this, and then goes on to say :

When this line of argument is adopted, it is tantamount to an admission that Lord Cochrane's conviction, if he was an innocent man, was owing not to the Judge who tried him, but to his own solicitors and counsel; and the question lies between Lord Cochrane and them and not between Lord Cochrane and Lord Ellenborough.

How far this accusation of neglect and incapacity has been made out I leave to the judgment of those who have read the preceding pages, and who will form their own opinion as to how far a firm of solicitors, then as now famous for their zeal and ability, and a group of the ablest and astutest advocates who have ever practised at the English Bar, were culpable in their management of Lord Cochrane's case.

Another feature which is very noticeable in the book is the absence of the fierce invectives against the Judge and prosecutors, of the charges of conspiracy and corruption, of the imputations on the Government and the Admiralty. These had been plentiful enough in Lord Cochrane's earlier writings and they were destined

p. 286.

to re-appear again ; but they were intended for a class of audience very different to that which this carefully reasoned work was addressed to. Of course I do not pretend that the writer in any way withdraws from the position that Lord Ellenborough misrepresented the evidence, and identified himself with the view put forth by the prosecution.

Whether Lord Ellenborough did misrepresent the real facts, and put strained or forced conclusions upon them suppressing all that was favourable to the prisoners and dwelling on all that told against them, can only be determined by comparing the evidence with his summing up. But at the same time I am bound to insist that his summing up should be tested by the evidence given in Court and not by a fanciful representation of evidence which was never tendered.

The author of the 1830 pamphlet is entirely at variance with Lord Cochrane's solicitors as to the method in which they examined the servants previous to the preparation of the Brief. A great point is also made of the discovery, elicited on the trial of Davidson for perjury, that De Berenger arrived at Dover in a coat described by two witnesses as being dark green, and this is assumed to have been the identical coat worn by him in Lord Cochrane's presence. The writer however omits the fact that Lord Cochrane over and over again has asserted that De Berenger appeared before him in *uniform*. As we have seen there was nothing at Davidson's trial to shew that the coat so worn was any part of a uniform.

Atlay,
p. 287.

'Autobiography,'
ii. 425.

'Letter to
Lord Ellen-
borough,'
p. 79.

Select Com-
mittee,
1877, par. 8.

In his affidavit of March 11, 1814, he describes it as a *green uniform* ; and in 1847, in his 'Observations on Naval Affairs,' he says 'De Berenger came to him in his *sharpshooter's dress*.'

Lord Melbourne informed Lord Cochrane on December 18 that 'His Majesty had returned the letter to him, but has not been pleased to signify any commands.' Lady Dundonald, however, succeeded in penetrating into the presence of William IV and there pleading her husband's cause. It is very difficult for a man brought up as a sailor to say 'No' to a charming lady. Her eloquence appears to have been irresistible, for on March 24, 1832, a free pardon was granted, and on May 2 Lord Dundonald was restored to the Navy List as a Rear-Admiral. A pardon

obtained in this manner cannot be looked upon as a proof of innocence.

In General Miller's 'Memoirs' Lady Cochrane is referred to as follows :—

Tertulias, or routs or dances were given nearly every evening at Valparaiso. The two presiding *belles* were Lady Cochrane and Mrs. Commodore Blanco, both young, fascinating, and highly gifted. The first was a flattering specimen of the beauty of England, and the second was perhaps the most beautiful and engaging woman in Chile.¹

Vol. i.
p. 208.

That he was not at this time restored to his honours, and that no compensation in money was then given to him, is to my mind conclusive proof that those who pardoned him and restored him to the Navy List did so merely as an act of forgiveness to one who was, at any rate, a gallant sailor.

Had he been an ordinary individual, with nothing to rely on except the merits of his case as connected with the trial only, and had he not captured the *Esmeralda*, I feel quite certain that he would never have been pardoned at all.

Politics had nothing to do with his condemnation, but they had a good deal to do with his restoration.

On this subject Mr. Atlay wrote :

In connection with the grant of the pardon it is only right to quote the words of Lord Melville in his letter of November 4th, 1825 :—' I apprehend that nothing but a free pardon from the Crown can now do away the effect of the verdict and sentence in your lordship's case ; but unless the Secretary of State and the Law Officers of the Crown were satisfied that such verdict and sentence were unjust, and ought not to have been pronounced, His Majesty would not be advised to grant a free pardon.' I humbly submit that Lord Melville was incorrect in stating the grounds on which pardons are accorded, or the inferences that must necessarily be drawn from them. A pardon may be granted on many grounds, and is consistent with either guilt or innocence ; subsequent or previous services, or the fact that

Select Committee
Report,
par. 6 ;
Atlay.
p. 289.

¹ At page 298 a whole paragraph is devoted to Lady Cochrane. She is there described as having ' the grace of a fairy.'

the punishment has entailed consequences out of all proportion with the sentence itself, have over and over again won the pardon of prisoners who are confessedly guilty ; and in the case of the innocent it may well be, and in the overwhelming majority of cases is, due to the fact of evidence coming to light which was unknown or unavailable at the trial. I have no knowledge of the number of pardons that are annually granted in the United Kingdom, but of this I am sure, that it is the very rarest occurrence for them to be bestowed on the ground 'that the verdict and sentence were *unjust*, and ought not to have been pronounced.'

See 'Observations on Naval Affairs,' p. 73 ; Atlay, pp. 289, 290.

In the name of the jury and Lord Ellenborough, who tried the case, and of the upright and distinguished judges who inflicted the sentence, I protest against any such inference being drawn.

'Autobiography,' ii. 19.

The law officers at the date when the pardon was granted were Sir Thomas Denman (afterwards Lord Chief Justice of the Queen's Bench), Attorney-General, and Sir William Horne, Solicitor-General. The grandson, in a letter to *The Times* of August 20, 1889, says, 'both these' (Lord Brougham and Lord Campbell) 'were the great law officers of the Crown, the one being Lord Chancellor and the other Solicitor-General at the time of his restoration to the navy, and therefore to their opinion as great lawyers must be further added the weight of official responsibility.' It is not accurate to describe the Lord Chancellor as a law officer, and I doubt whether he is consulted, at any rate officially, in such matters. Lord Brougham's testimony to the impartiality of Lord Ellenborough at the trial is as emphatic as words can make it. Lord Campbell was not made Solicitor-General for some months afterwards (November 24, 1832), and the next chapter will, I think, afford evidence of the extent of his acquaintance with the facts of the trial.

'Life of Lord Campbell,' ii. 19.

In the 'Autobiography of a Seaman,' vol. ii. p. 318, Lord Cochrane is represented as saying: 'That unjust public sentence has never been publicly reversed, nor the equally unjust fine inflicted on me remitted.' . . . 'The Government of my country has, though often invoked, refused to

reinvestigate my case, as impossible in form, and from fear of creating a precedent.'

Now the 'Autobiography' referred to was published in 1860. In 1877 Lord Cochrane (now Lieut.-General the Earl of Dundonald) particularly requested the Select Committee of the House of Commons '*not to recall the incidents of the trial of Lord Dundonald, still less to scrutinize the evidence on which he was convicted.*' To have done so would have been fatal to his claims, as the slightest scrutiny of the evidence would have destroyed the general belief in Lord Cochrane's innocence, which had been brought about by the publication of the so-called 'Autobiography of a Seaman.'

In 1847 a pamphlet, 'Observations on Naval Affairs,' appeared under the name of Lord Dundonald which contained a recapitulation of the principal facts of his case, based principally on the 'Letter to Lord Ellenborough.'

It contains some curious and characteristic calculations as to Lord Cochrane's pecuniary losses in consequence of the trial, an improved version of the affair with the so-called French corvettes on the Gironde, one of which vessels appears to have grown with the lapse of time into a large armed frigate-built storeship, and also a great deal of abuse of Lord Ellenborough. At p. 85 the *Gloire* is described as a corvette, and as a frigate-built ship at p. 89. Lord Cochrane is depicted in it to have become more innocent and more ill-used than was alleged in 1830, and I have no doubt that many people actually believed its contents. At any rate he was shortly afterwards restored to his honours, and appointed to the command of the North American and West Indian station.

'Observations on Naval Affairs,' p. 45.

At a ceremony of investiture, unless the new G.C.B. is of Royal blood, it is customary for the two junior Grand Crosses present to act as his sponsors.

When this ceremony took place, Lord Ellenborough, the eldest son of the Chief Justice, happened to be one of the juniors present and acted as his sponsor. Taken by surprise, he may well have preferred to act as his sponsor to causing an unseemly squabble in, or almost in, the very

presence of the Throne, and I do not see that any inferences can well be drawn from his conduct. In all probability he had never heard of the 1830 and 1847 pamphlets and had forgiven the abuse of 1814-16. But such forgiveness should have been met with similar forbearance, and the abuse of Lord Ellenborough should have ceased. Unfortunately, by this time it began to be perceived that there was money in it, and that calumnies if sufficiently repeated might possibly be turned into cash.

Lord Dundonald, thinking himself now on the top of the wave, tried to be elected as a representative Peer of Scotland so as to sit in Parliament, but the Scotch Peers would have none of him.

During the Russian war he offered to carry out his secret plans under conditions which the Government of that day thought inadmissible. (They will be found in the Appendix.) He died in October 1860. Lord Chief Justice Ellenborough had died in 1818, so that for forty-two years after the death of the judge Lord Cochrane had had the ear of the public.

For a long period Lord Ellenborough's relatives and friends had thought the judge's memory was sufficiently defended by the House of Commons vote of 1816, when that House, by a division of 89 to 0, repudiated the charges made by Lord Cochrane against Lord Ellenborough, and thus it was that the collections of historical myths published by various Dundonalds had gradually obtained credence.

PART V

LORD CAMPBELL

IF, before writing an account of the 'Trial of Lord Cochrane,' Lord Campbell had taken the trouble to glance at the shorthand notes of the trial, or at the London papers of June 9 and 10, 1814, he would have saved himself from making a number of inexcusable mistakes.

At p. 279 he mixes up Lord Cochrane's two uncles, The Hon. Cochrane Johnstone and the Hon. Basil Cochrane. Even the writer of the 'Autobiography' is obliged to correct his quotations from Lord Campbell in notes.

Campbell's,
'Lives of
the Chief
Justices,'
ed. 1874,
iv. 279.

Lord Campbell says that the uncle and De Berenger spread 'false intelligence that a preliminary treaty of peace had been signed between England and France. Everything succeeded to their wishes; the intelligence was believed, the Funds rose, and they sold on time-bargains many hundred thousand pounds of 3 per cents. before the truth was discovered.'

Now the news that they did spread was that of the defeat and death of Napoleon, and the entry of the Allied Sovereigns into Paris. Furthermore, De Berenger never sold any stock on time-bargains. It was Lord Cochrane, Cochrane Johnstone, and Mr. Butt who did that. But Lord Campbell calls Cochrane Johnstone by the name of *Cochrane only*, and never mentions Mr. Butt.

He speaks of Lord Cochrane as living in the speculative uncle's house at the time of the fraud. This he never did. That uncle had a house in Great Cumberland Street. It was in the other uncle's house, in Basil Cochrane's house in Portman Square, that Lord Cochrane had at one time lived, before he took the house in Green Street, where

De Berenger sought refuge. One of the most important points in the evidence against Lord Cochrane was that he had very recently moved into a house of his own, and that De Berenger knew where to find him.

Lord Campbell says :

Campbell's
'Lives of
the Chief
Justices,'
ed. 1874,
iv. 279.

However when the fraud was detected—partly from a belief in his complicity, and partly from political spite—he (Lord Cochrane) was included in the indictment preferred for the conspiracy to defraud the Stock Exchange.

I have never been able to find any evidence of political spite except in Lord Cochrane's accusations. Lord Campbell does not appear to be aware that Lord Cochrane held £139,000 of Omnium on the day of the fraud, that De Berenger not only went to Lord Cochrane's house for a disguise, but obtained it, and that when arrested he had in his possession notes, which were the produce of a cheque of Lord Cochrane's. After they had ascertained this, the Stock Exchange could not help prosecuting Lord Cochrane, if they prosecuted anybody. There was more evidence against him than there was against Butt or Cochrane Johnstone.

Lord Campbell goes on to say :

Ibid.

The noble and learned Judge, being himself persuaded to the guilt of all the defendants, used his best endeavours that they should all be convicted. He refused to adjourn the trial at the close of the prosecutor's case at about nine in the evening, when the trial had lasted twelve hours, and the jury as well as the defendant's Counsel were all completely exhausted, and they all prayed for an adjournment.

Mr. Atlay writes :

Atlay,
p. 305.

That Lord Ellenborough was persuaded of the guilt of the defendants is perfectly true, and it is difficult to see who could have helped being so on the evidence adduced in Court. No doubt he summed up strongly against them, but if Lord Campbell insinuates that he was guilty of partiality or oppression, that he excluded admissible or included inadmissible evidence, or conducted himself otherwise than with scrupulous fairness, the short-hand notes of the trial are in existence to contradict it.

With regard to the length of trials in those days, and even in our own times, I have treated the subject in another place, and I shall therefore only remark now that if Lord Campbell had refreshed his memory before writing about the trial, he would have found that Best, Lord Cochrane's counsel, never asked for an adjournment, that the jury never did so, and that the only person who did so was Park, De Berenger's counsel, who doubtless wished to have time for consultation with others, before commencing a defence based on perjured affidavits.

Atlay, see
p. 308.

The following day, in summing up, prompted no doubt by the conclusion of his own mind, he laid special emphasis on every circumstance which might raise a suspicion against Lord Cochrane and elaborately explained away whatever at first sight appeared favourable to the gallant officer. In consequence the jury found a verdict of Guilty.

'Lives of
the Chief
Justices,'
ed. 1874,
iv. 279.

Mr. Atlay writes :

This very serious charge of misdirection can only be founded on Lord Campbell's recollections, as he obviously had not re-read the evidence before writing the account of the trial, if indeed he had ever read it at all. It forms the gist of Lord Cochrane's complaints in his 'Article of Charge,' his 'Letter to Lord Ellenborough,' and the 'Review of the Case of Lord Cochrane'; and as these accusations are repeated in the 'Autobiography of a Seaman,' it will be more convenient to deal with the question of the summing up, so far as it has not yet been dealt with, in the following chapter.

Atlay,
p. 317.

Next term Lord Cochrane presented himself in Court to move for a new trial, but the other defendants convicted along with him did not attend. He said truly that he had no power or influence to obtain their attendance, and urged that his application was founded on circumstances peculiar to his own case. But Lord Ellenborough would not hear him because the other defendants were not present. Such a rule had been before laid down, but it is palpably contrary to the first principles of justice, and it ought immediately to have been reversed.

'Lives of
the Chief
Justices,'
ed. 1874,
iv. 317.

The portion of this paragraph in italics fairly represents what took place in the Court of King's Bench on June 14, except that it leaves the false impression that it was only the Chief

Atlay,
p. 318.

Justice and not the whole Court which refused the application. The remainder of it requires both explanation and comment.

If it were necessary to show the interposition of the puisne judges on this occasion, evidence would be afforded by the remarks of Mr. Justice Dampier :

Atlay,
p. 318.

Atlay,
p. 318, who
quotes
Maule and
Selwyn.

By the rules of Court it cannot be : your lordship has been informed of the practice of the Court, and from that practice the Court has no power to depart. . . . Now, on the morning of Tuesday, June 14, 1814, Nolan moved for a new trial on the behalf of John and Louisa Askew, who had been convicted, together with one Margaret Hipwood, of an indictment charging them with a conspiracy to indict the prosecutor for felony. He stated that Margaret Hipwood was not then present, that search had been made after her, but she was not to be found, having left her residence before the trial, at which time she was at large upon her own recognisances. Lord Ellenborough, C.J., interposed and referred to *Rex v. Teal*, where the Court determined that the presence of all the defendants for a conspiracy was necessary in order to move for a new trial, and he observed that the reason clearly was to prevent the most guilty from keeping out of the way and putting forward the least guilty in order to try the result of a motion for a new trial. Le Blanc, J., added that when the Report came before the Court in a future stage of this proceeding, if upon the reading of the Report the Court saw any reason to think that justice had not been attained, it was open to them at that time, either by directing a new trial or in any other way, to see that justice should be done. So Nolan took nothing by his motion.

Atlay,
p. 319.

It was at the close of this very day that Lord Cochrane appeared with his motion for a new trial, and had it refused him by the Court on the ground that they must abide by the rules they had laid down, without distinction of persons. So we find that the rule had not only been laid down some years at least before, but had been acted on that very morning. Nor can I agree that it is palpably contrary to the first principles of justice. The reasoning of Lord Ellenborough in both *Rex v. Teal* and *Rex v. Askew* seems very pertinent. The Court, as Sir Simon Le Blanc said, '*have still the power of ordering a rehearing if they see that justice has not been done,*' but they cannot do it in the same form. A writer in the *Law Magazine and Review*, to whom I have frequently had occasion to refer, says :

Practically in *Teal's Case*, as in Lord Cochrane's, no hardship was suffered through the rule, for the Court in the former case heard the arguments of Counsel on the reading of the Report, and would have then granted a new trial had justice required; and in Lord Cochrane's case the like opportunity was offered him to impugn the verdict, and he accepted it and failed.

Lord Campbell says that such a rule ought to have been immediately reversed. In November 1851, when sitting *in banco* with Justices Patteson and Erle, the opportunity of so doing had been afforded him, some years before writing Lord Ellenborough's life, in the case of the *Queen v. Caudwell*, but he had refused to avail himself of it. This case differed in that there was only one defendant, but Lord Cochrane's case was cited and not disapproved of, except that Lord Campbell said, '*I have thought it a hardship that one of several defendants could not move unless all were before the Court.*'

Atlay,
p. 320.

'*Lord Cochrane was thus deprived of all opportunity of showing that the verdict against him was wrong.*'

'Lives of
the Chief
Justices,'
iv. 280.

How absolutely false this is has been sufficiently demonstrated both by the preceding paragraph and by the account of what took place in the King's Bench on June 20.

Atlay,
p. 320.

Although as yet he was generally believed to be guilty, the award of this degrading and infamous punishment (the pillory) upon a young nobleman, a member of the House of Commons, and a distinguished naval officer, raised universal sympathy in his favour.

With regard to the pillory and to the sentence passed on the whole body of the defendants, critics seem to put aside what is generally accepted as the cardinal principle to be adopted in passing sentence on criminals—namely, that the punishment should be adequate to the crime, and that it should be inflicted without distinction of persons. To urge that a man should be exempt from a form of punishment prescribed by the Legislature for the offence of which he has been found guilty, because he is a 'young nobleman,' or a 'member of the House of Commons,' or 'a distinguished naval officer,' or all three, is an argument that is absolutely fatal to judicial impartiality, and comes with peculiar inappropriateness from the pen of one who at the moment of writing held the high office of Chief Justice of the Queen's Bench (Lord Campbell).

The pillory was a relic of a barbarous age, when cruelty

Atlay,
p. 320.

was of the essence of punishment, when crime was rife, and constables were few; and it was most deservedly swept from the Statute Book in the first year of the Queen Victoria's reign. In 1814 it was part of the law of the land, and though in 1816 it was abolished in all cases but one, it remained as a punishment for perjury and subornation of perjury up to 1837. The sentence was imposed, not in hot haste, as is asserted in the 'Autobiography of a Seaman,' but after long deliberation, and not by Lord Ellenborough alone, as is so often assumed, but by a Court of four Judges, of whom Justice Bayley, as we have seen, afterwards declared that it was the weighed and matured decision of each and all of them.

Atlay,
p. 321.

That Lord Ellenborough was not in the habit of inflicting the pillory lightly or on his own responsibility appears sufficiently from a speech of his made in the House of Lords on July 5, 1815, when he said:—

That he himself had never inflicted the punishment, when alone on circuit, except in one instance, where he had ordered two persons to be put in the pillory for having taken a bribe for assisting in the escape of French prisoners; an offence which the Legislature soon after made felony punishable by transportation. In the course of the same debate Lord Eldon said there were offences with respect to which it would be unwise to abolish the punishment of the pillory, for instance, cases of perjury and fraud, or cheating, and especially in cases of mixed fraud and perjury. Cases might arise where persons might attempt to defend themselves against a conviction for fraud of which they had been guilty, by perjury or subornation of perjury.

There is no reference to any particular case, but the application is sufficiently obvious.

Campbell,
iv. 281,
1874 Edition.

Lord Campbell, writing forty years after the event, says that in consequence of this trial Lord Ellenborough was looked upon coldly in Society and in the House of Lords. 'Having now some misgivings himself as to his conduct in this affair he became very wretched,' and that 'it was said that these matters preyed deeply on Lord Ellenborough's mind and affected his health.'

All this is untrue. Lord Campbell had evidently forgotten Lord Cochrane's attempt to impeach Lord Ellenborough, and of its defeat in the House of Commons by a majority of 89 votes to 0. Lord Ellenborough never had

any doubts about the justice of the verdict or about the propriety of his own conduct. His health, too, did not begin to break down until three years after the trial.

In a note Lord Campbell says that 'Lord Cochrane's case being re-considered, he was restored to his rank in the navy.' The latter part of this sentence is true but when, where, and by whom, the case was re-considered I have been utterly unable to find out, and I should be much obliged to the writers who so glibly repeat this statement, if they would be kind enough to give me the required information.

Campbell,
iv. 281,
1874 Edition.
Atlay,
p. 322.

Had Lord Campbell, when sitting as a judge, ever summed up a case in Court as inaccurately as he summed up the *Cochrane Case* in his 'Life of Lord Ellenborough,' I believe that an address from both Houses would have caused his removal from the Bench. The 'Autobiography' reprints several passages of the *Lives of the Chief Justices*, carefully leaving out every word in favour of Lord Ellenborough without putting any indication to show that passages have been omitted. Mr. Atlay has reprinted these paragraphs, putting in italics the portions left out in the 'Autobiography.'

pp. 323-4.

I should only weary the reader if I went into detailed refutations of other portions of Lord Campbell's account of Lord Ellenborough.

Mr. Atlay and myself are not by any means the only persons who have impugned the accuracy of Lord Campbell's historical works. For instance, Mr. G. P. Medonell has described Lord Campbell's work as being

among the most censurable publications in our literature. . . . Literary morality in its other form, the love of historical truth and accuracy he hardly understood. No one who has ever followed him to the sources of his information will ever trust him more, for not only was he too hurried and careless to sift the evidence he gathered, but even plain statements of fact are perverted, and his authorities are constantly misquoted.

'Dict. Nat. Biography,'
under Lord
Campbell.

Mr. J. B. Mullinger in his 'Introduction to the Study of English History' says at p. 229 :

As a historical production, the whole work is wanting in the due sense of the obligations imposed by such a task, is disfigured by unblushing plagiarisms, and as the writer approaches his own times by much unscrupulous misrepresentation.

Edition
1861, iv.
147.

Mr. Christie has minutely criticised the 'Life of Lord Shaftesbury.' In his 'Life of Lord Kenyon,' Lord Campbell writes: 'To spare the feelings of one so pious [referring to Lord Kenyon's eldest son], I resolve that this Memoir shall not be published in his life time.'

This I look upon as a wise precaution on the part of Lord Campbell. An eldest son well acquainted with the details of his father's life would be much better qualified to deal with the wild assertions of Lord Campbell than a grandson. This duty was undertaken by Mr. G. T. Kenyon, who re-wrote the life of his grandfather.

Lord St. Leonards found it necessary to write a pamphlet in his own defence called 'Misrepresentations in Campbell's "Lives of Lyndhurst and Brougham."' I have heard the saying attributed to Lord Brougham: 'That it added a sting to death to know that your life would be written by Lord Campbell.'

The preface of Sir Theodore Martin's 'Life of Lord Lyndhurst' contains the following passages:

Lord Campbell's 'Life of Lyndhurst,' compare p. 22 with pp. 150-151 of Martin. Campbell misquotes Hansard—a crime he frequently repeats.

Many of [Lord Campbell's] misrepresentations have crept into general circulation, and been re-iterated by writers who had probably neither the means nor the inclination to institute original inquiries. . . . It was indispensable, in justice to the memory of Lord Lyndhurst, to show that Lord Campbell's self-imposed task had not been discharged with the regard to accuracy and to impartiality which are the first duties of a biographer—but the neglect of which becomes wholly inexcusable in a man whom his vocation in life, and the long exercise of judicial functions, might have taught to sift his facts, to distrust his own prejudices, and above all to deal out justice, and to maintain truth.

The most extraordinary part of Lord Campbell's 'Life of Lord Ellenborough' is the high praise that he occasionally finds himself constrained to give him. For instance, he commences his biography by saying:

I now come to a Chief Justice with whom I have had many a personal conflict, and from whom for several years I experienced very rough treatment, but for whose memory I entertain the highest respect. He was a man of gigantic intellect; he had the advantage of the very best education England could bestow; he was not only a consummate master of his own profession, but well initiated in mathematical science, and one of the best scholars of his day; he had great faults, but they were consistent with the qualities essentially required to enable him to fill high office with applause, ELLENBOROUGH was a *real* CHIEF—such as the rising generation of lawyers may read of and figure to themselves in imagination, but may never behold to dread or admire.

Capitals
and italics
in the
original.

At p. 192 he says :

At the breaking out of the French Revolution, Law joined the very respectable body of alarmist Whigs who went over to the Government, he being actuated, I believe like most of them, by a not unreasonable dread of democratical ascendancy, rather than by any longing for official advancement. However he refused offers of a seat in Parliament.

Edition,
1861, iv.
192.

At p. 214 he says :

Not only had he the incorruptibility common to all English Judges, but he was inspired by a strong passion for justice, and he could undergo any degree of labour in performing what he considered his duty.

Edition
1861, iv.
214.

At p. 255 we find :

Lord Ellenborough regularly attended the trial of Lord Melville, and as to the 2nd, 3rd, 5th, 6th, 7th, and 8th Articles, laying his hand upon his breast, he said with great emphasis and solemnity, 'Guilty, upon my honour.'

Almost all good Tories said 'Not Guilty,' and the independent course taken by Lord Ellenborough very much raised him in public estimation.

At p. 253 he mentions :

While the Talents remained in office the only Government measure on which the Lord Chief Justice spoke in the House of Lords was the bill for abolishing the Slave Trade.

Edition,
1874
vol iv.

He spoke in support of the bill.

At p. 292 he says :

Edition,
1874, v.
292.

This character has been thus drawn by one who knew him well. I never knew any man except the Duke of Wellington who was so innately just. He thoroughly loved justice—strict justice, perhaps, but still justice. He was also thoroughly devoted to the performance of his duty. I have heard him say that no private consideration could absolve a man from the execution of public duty,—that should the person dearest to him in the world die, he would go into court next day, if physically capable of doing so. . . . Men bear in willing recollection his unspotted integrity, his sound learning, his vigorous intellect, and his manly intrepidity in discharge of his duty.

PART VI

THE EARP-JACKSON-DUNDONALD LITERATURE

CHAPTER I

‘ THE AUTOBIOGRAPHY OF A SEAMAN ’

IN 1857 the ‘ Narrative of Services in the Liberation of Chili, Peru, and Brazil ’ was published under the name of Dundonald. It is the first of a series of Earp-Jackson-Dundonald writings, which were written by a certain Mr. Earp, regardless of facts, dates, and documents, for the purpose of supporting Lord Dundonald’s money claims, of which Mr. Earp himself was to receive a substantial percentage if his writings met with the desired success. These books have been a fraud on the boyhood of England for over fifty years. I am glad, however, to relieve the memory of Lord Dundonald, of some portion of the discredit attaching to their publication, for it was shown in 1862 that Lord Dundonald’s memory had begun to fail seriously at the time they were published, and that Mr. Earp, in his evidence in 1862 before the Lords’ Committee for Privileges, declared himself to be the writer of the works in question.

Mr. Earp’s
evidence.

The rambling way in which they are written makes it very difficult to deal with the events mentioned in their chronological, or any other, order.

In his will Lord Dundonald not only described Mr. Earp as his ‘ friend and literary coadjutor,’ but left him ten per cent. of all the money that he considered was due to him by the British, Chilian, and Peruvian Governments.

It also declared that to his 'literary exertions would be mainly owing any recovery of the said sums.' And as Lord Dundonald appears to have left very little property, it seems to be more than probable that the Earp clauses in the will were placed there for the purpose of carrying out an arrangement made during the lifetime of both parties.

The preface of the 'Narrative of Services' concludes as follows:—

Preface,
p. 22.

At my advanced age, such a task as that now partially executed, would, perhaps, have presented insuperable difficulties, but for the assistance rendered me by Mr. Earp, who, with great perseverance, has unravelled—what, in the lapse of time, had become the almost inextricable confusion of my papers. That, however, has, with his assistance, been accomplished in such a way as to base upon original documents every incident contained in the work—the more important of these documents being adduced, so as to admit of neither doubt nor question. The same course will be pursued in the forthcoming English portion of my career, with a result, I trust, equally clear and convincing.

Whole pages of the 'Narrative of Services' consist of quotations from a journal and accounts kept by William Jackson, and I am not surprised to find Lord Cochrane involved in pecuniary and other squabbles whenever that name is relied upon for 'original documents' which 'admit of neither doubt nor question.'

In 1859 the first volume of the so-called 'Autobiography of a Seaman' appeared. It was followed by a second volume in September 1860, a few weeks before Lord Dundonald's death.

Lord Dundonald's death was in one way most opportune for his reputation. Had he lived six months longer he would have been called to account for the innumerable historical inaccuracies in that volume, not only in connection with his trial, but with reference to Basque Roads and other matters. As it was, his death checked controversy for a time, and he had the full benefit of the temporary feeling, which is summed up in the words, 'De mortuis nil nisi bonum.' He was buried in Westminster Abbey. Some persons have considered the fact of his being buried there as a proof

of his innocence. That interment, however, proves nothing except the credulity of a Dean, who believed in the truthfulness of the 'Autobiography of a Seaman.'

The 'Autobiography' quotes some of the reports of the Commissioners appointed to enquire into naval abuses, as proofs of the shameful manner that the country was cheated by naval contractors and others. Of course, the inference that the 'Autobiography' wishes to be drawn is that all the people connected with the trial had an interest in these abuses. What the Stock Exchange could have to do with them is hard to say.

'Autobiography,'
i. 157-8.

The writer omits to mention that Ewan Law, Lord Ellenborough's brother, was one of these Commissioners, and that the 'warm support' that Lord Ellenborough gave the bill had a good deal to do with its passing. Ewan Law did more for naval reform than ever Lord Cochrane did, though he made less noise about it.

'A Naval Career in the Old War,' p. 191
et seq.

On July 24, 1862, Mr. Earp was called as a witness in the Dundonald peerage case, and was duly sworn. I give some extracts from his evidence.

Q. Mr. Fleming.—Did you afford him (Lord Dundonald) any assistance in the preparation of the book called his 'Memoirs'?

Evidence taken
July 24,
1862,
p. 83.

A. Mr. Earp.—Yes.

Q. Had you in consequence of that had confidential communications with the late Earl?

Committee
of Privileges.

A. On every subject.

Q. I believe Lord Cochrane gave you a good deal of information regarding the whole of his career?

A. Everything, he concealed nothing: otherwise I would not have written his Memoirs in the way they were done.

Q. Did he dictate the facts to you which you put into the memoir?

A. Yes, he frequently told me the facts, and those facts I verified by documents, and I found them always correct.

• In reply to Lord Chelmsford he said:

A. I should state in explanation that my general practice in writing that book was to write it from his documents, not from his words, because I frequently found his memory fail of late

years. I wrote it from his documents, and in general he made very little if any alteration, he was quite content with it.

Q. Viscount Hutchinson.—Did you derive that information from Lord Dundonald's documents, or from his verbal communication?

A. From his verbal communication.

Q. You have already stated that at the time when you were obtaining this information from him for the purpose of writing this memoir, his memory had begun to fail?

A. His memory had begun to fail very seriously, so much so that I took down many things from his lips, but I made it a practice never to insert anything unless I had documents to verify it, and by that means I found many of his statements not erroneous from principle but erroneous from recollection.

Q. This statement in respect of Mr. Basil Cochrane's marriage was not supported by any documentary evidence?

A. No document whatever.

Q. Then how came it that you left it in the Memoir?

A. By Lord Dundonald's own command; he ordered that the chapter should be left precisely as he left it. He scratched out three or four pages and he inserted other words, and the chapter was printed precisely as he left it, so particular was he upon this point, that he requested the proof sheet to be returned to him with the corrections.

The chapter in the 'Autobiography' dealing with Lord Cochrane's marriage also professes to give an account of the circumstances that led up to the marriage of his uncle, the Hon. Basil Cochrane.

Now the case laid before the Committee of Privileges in 1861 was that Lord Cochrane left London on August 6, 1812, was married at Annan on the 8th, left his wife at Annan, and returned to town in time to be at his uncle's wedding on the 13th. The above dates contradict the story of these marriages as told in the 'Autobiography.'

Part of this chapter is devoted to attacks on the conduct of the Hon. Basil Cochrane. His grand-nephew the twelfth Earl has reprinted them. Whether he has found any evidence to support them outside the 'Autobiography' I do not know, but they are, I think, inconsistent with the fact that eighteen months after these marriages took place

he was residing in his uncle's house, and that four years after they had taken place, in July 1816, the Hon. Basil Cochrane was present at the trial of Davidson, acting in his nephew's interests.

In another part of the 'Autobiography' Mr. Basil Cochrane is described as a 'highly honourable man'; and I think that I am only doing justice to his memory when I mention that in my researches I have discovered nothing that would lead me to think of him otherwise.

'Autobiography,'
ii. 321 n.

P. 88. Re-examined by Mr. Fleming.

Q. As to that particular passage to which my learned friend has drawn your attention by whom was that written originally?

A. That I cannot tell you whether that is one of Lord Dundonald's interpolations or whether I wrote it myself; but I think the probability is that I myself wrote it, in consequence of what he had said before.

Q. Were those conversations with Lord Dundonald casual conversations from time to time?

A. No, they were not casual, our communications were daily—I went to his house or he came to my house; our communications were daily and always upon the point next to be treated in the book. They were not casual but studied between us.

Q. Then the whole memoir is subject to those observations?

A. The whole memoir is subject to those observations. The process was, that anything that he might recollect, or anything that I knew, I took down from him taking care first to verify it before it went to the public.

The following extracts from the correspondence between Mr. Earp and Mr. Jackson show how much the former was driven to rely upon the memory of Lord Cochrane's unscrupulous secretary for a great deal of his information:—

Earp to Jackson.

January 20, 1859.

MY DEAR SIR,—I have to-day been looking over your excellent poem the 'Gambyriad,' of which though the subject is somewhat out of date, the notes appended to it are of importance. From the printed notes I have an idea that you may possess other books or papers relating to the earlier portion of his Lordship's

career, and if so, their loan would be very acceptable, since a very large portion of his Lordship's papers is lost, left no doubt somewhere or other where his papers have been deposited; but where he has no recollection.

If you can assist me in this way or in any recollections of his early career, which his lordship has no doubt recounted to you over and over again, you would be rendering both to his Lordship and myself a great service, or if you have at any time made notes of such conversations, they would add much to the interest of the first part of the English work for which the materials are not so abundant as I could desire. If you see all the papers you will be gratified by the extensive and favourable notice which has been taken of the 'Chili' and 'Brazil' and I have every expectation they will turn out for good. If the Brazilians can read *The Times* criticism and not do justice to every officer, they must be a shameless set.

Letter B. 3.
p. 39 of
'William
Jackson's
evidence,'
taken
July 30,
1862.

Mr. Jackson was one of the officers referred to above. In his evidence he says that he held the rank of major in the Brazilian service, when acting as secretary and paymaster on board Lord Cochrane's ship.

Earp to Jackson.

April 21, 1860.

You mistake about any interruption to the second volume, my fear is that it will come out too soon for its reputation. It would give me pleasure to have six months more to do it in, instead of not quite two. Hurry is a fatal mistake in book-making, if a book is intended to live after its author. I don't know whether you have come across anything else between 1812 and 1818 that may be useful. I am sadly deficient in materials for that period.

Letter B. 4.
'W. Jackson's
evidence,'
p. 39.

May 3, 1860.

Letter B. 5.
'W. Jackson's
evidence,'
p. 39.

I am very much obliged for the parcels you have sent me. They are of great use, as bringing up matters, which Lord Donald's memory no longer retains and of which his sons have only imperfect remembrance. Even the merest scrap containing his name may throw light upon what would otherwise be obscure, as in several instances the case from what you have kindly sent. The next volume will go to 1818, the period when he went to Chili. Anything else you may find will be truly acceptable.

May 26, 1860.

* * * I have told his Lordship of the letters and extracts you have so kindly sent, and he is much gratified, telling me to ask you for any scrap which may throw light on matters from 1814 to 1818.

After Lord Dundonald's death.

February 12, 1861.

The next volume is getting on but slowly, as there are many interruptions of one kind or other. It will not be ready before midsummer. Lord Dundonald has left a will, but as it is not proved, I am not at liberty to mention its contents. It is however, at present a will with nothing to bequeath, but some day a good sum may be got from the Brazilian and perhaps Chilian Governments; that is by working for it, but there is so much dissension amongst some of the family, that although I am interested in the matter, I care very little about troubling myself with it. Anything you may recollect about him from 1814 to 1818 will be very acceptable.

Page 41, an undated letter.

I have no doubt Bentley is very much annoyed at the delay, but as a feeling for publisher's annoyances is not among my weaknesses, he only worries himself and affords me considerable amusement thereby. My object is to clear Lord Dundonald's character, and in comparison with that, I do not think Mr. Bentley's annoyance worth the slightest consideration. * * * Any suggestions from you will be valuable as all your suggestions have been.

Jackson to Earp.

April 9, 1861.

As my news from Rio de Janeiro received this morning is very bad, namely that there is no appearance of my prize claims being any nearer to a conclusion than they were when I last heard six months ago, and as I expect my mortgagee will be demanding his year's interest in a few days, I must try to raise money on the letters of the late Earl. I solicit your opinion on the money value of a thousand autograph letters of that eminent man through a course of fifty years from 1811 to 1860. I think they would be cheap at a hundred pounds.

Letter A.11.
'W. Jackson's evidence,'
p. 31.

' W. Jackson's evidence,'
p. 42.

P. 42. Mr. Earp replied to this, saying that: I should for my own interest urge the present Earl to get an injunction restraining their sale.

Jackson's threat produced some effect, for the eleventh Earl, on April 25, wrote to him :

Letter
B. 1. ' W.
Jackson's
evidence,'
p. 37.

I enclose a check on my banker for £25, and am sorry that the very heavy payments I have been called on to make since the death of my poor father does not enable me to do more for so old and valued a friend of his.

Better days may come, and if I obtain a pension from Government for my father's services I will do more for you. I beg you will be good enough to place your seal on the box of papers and direct it to be forwarded by fast train.

Jackson afterwards declared that he considered this payment to be a part of his legacy, for Lord Dundonald had left the sum of £100 to his ' steady friend and former secretary.'

That he again endeavoured to extract money from the eleventh Earl is shown by the following letter, in which he gives more than a broad hint that the sort of evidence he will give before the Lords' Committee for Privileges will largely depend upon the remittances he may receive.

Jackson to Earp.

April 21, 1862.

Letter A. 9.
' W. Jackson's evidence,'
p. 30.

I was greatly disappointed on receiving your letter of the 16th inst., which being sealed with wax and bearing *two* postage stamps, I had no doubt contained a valuable enclosure, especially as I had reminded both his Lordship and yourself that I am under the same necessity this year as I was last, and must either pay the interest of my mortgage within a very short period or be ejected from my house and land, and had hinted in my letter to you of the 11th instant that I hope his Lordship would be able to relieve me, if not by any remaining means of his own yet by the aid of his wealthy father-in-law. It must be obvious to you that I cannot apply my mind to collecting and giving information regarding events which occurred between 40 and 50 years ago while in imminent danger of ejection.

Besides I have no remaining diary of that period, having sent you from time to time whatever information I possessed

both from memory and recorded facts, and last year, in return for his Lordship's remittance, I sent him all the letters I had received from the late Earl, and all the documents which remained in my possession relating to his affairs.

I continue to speak of the late Earl's eldest son as the present Earl of Dundonald, but I must confess I have my doubts. I hear that . . . claims the Peerage with what effect time will show.

He then appears to have turned his attention to the other claimant, but he denied having received money from him until he was confronted with his own handwriting of May 3, 1862, which proved that he had on that day received two halves of £10 notes from him through a solicitor's office. Then he declared that he looked upon this £20 as being also a part of his legacy.¹

'W. Jackson's evidence,
p. 32.

Jackson's evidence was given on July 30 and 31, 1862.

Lord Brougham said of him: 'The evidence of that witness, I believe, has not raised a doubt in the minds of any of the noble and learned lords who have heard the case.'

Sir Fitzroy Kelly, who appeared for the eleventh Earl, said of Mr. Jackson: '*He has actually received what I do not hesitate to call a bribe of £20 to give this evidence.*'

Lady Dundonald, Lord Cochrane's widow, when on oath before the Lords Committee for Privileges, said of him: 'I have always despised the man, and look upon him as the greatest enemy my husband had in life, and the ruin to his purse and character. Alas! Lord Cochrane had much more confidence in him than he deserved.'

'Evidence,'
p. 20.

Yet this creature's writings from 1814 to 1860 are the foundation stones of the public belief in Lord Ellenborough's partiality, in Lord Cochrane's innocence, and of the most important paragraphs of the 'Autobiography of a Seaman' and of other books that are based upon it.

Why should this man be believed in one case and not in the other?

The eleventh Earl of Dundonald, in his preface to the 'Life of Lord Dundonald,' published in 1869, makes the following allusion to Mr. Earp in describing the materials from which his work ('Life of Lord Dundonald') was compiled:

¹ He may have received more, but £20 is all that can be proved.

My father's papers were, at the time of his death in the hands of a gentleman who had assisted him in the preparation of his 'Autobiography' and to this gentleman was entrusted the completion of the work. Illness and other occupations, however, interfered, and after a lapse of about two years he died, leaving the papers of which no use had been made by him, to fall into the hands of others. Only after long delay and considerable trouble and expense, was I able to recover them and realise my long cherished purpose.

So that the 'Life of Lord Dundonald,' as published by the eleventh Earl, resembles its predecessors in being principally based on Earp's ten per cent. on documents written or supplied by William Jackson, and on Lord Dundonald's failing memory. The object of the work was evidently to manufacture further evidence in support of pecuniary claims.

In 1890 the grandson republished a compressed edition of the 'Autobiography of a Seaman,' with a sequel. In the preface to the sequel he says: 'My plan has been to use my grandfather's own words as much as possible.' He further says that the sequel is largely composed from the Chili, Peru, and Brazil volumes published in 1859, and from the 'Life of Dundonald' I have just alluded to. He wrote:

In order to keep the present work within a compact volume, I have ventured to omit from the 'Autobiography' such portions and many appendices which I thought might be spared without impairing the value of the book for general reading as the earlier editions still remain for reference, if required.

Now, without wishing to underrate any of the wonderful exploits which Lord Cochrane actually performed, I must point out that all those exploits which depend on the Earp-Jackson-Dundonald writings, or on works derived therefrom, require corroboration. When reading an account of a gallant achievement or of a skilful device it is unpleasant to have to think: 'How much of this is true? How much must I deduct for Earp's ten per cent.?'

There is, however, a residue of unquestioned facts sufficient to prove that he was a most skilful seaman, in some respects a nautical genius, capable of both planning

and leading an attack. He relied largely on surprise, and generally attacked the enemy in a manner that he did not expect.

With a few exceptions I have left to others the task of analysing the various accounts of the warlike feats attributed to him, and shall only deal with the Autobiographical assertions which are more or less connected with the trial.

In February 1861 the *Law Magazine* published an article on Lord Cochrane's trial based on the 'Autobiography.' It accepted the theory of Lord Cochrane's innocence, condemned the Court of King's Bench for passing too severe a sentence, and it used far stronger language than Mr. Atlay has done about Lord Campbell's historical methods. The writer considered that a miscarriage of justice had taken place in consequence of the carelessness of Lord Cochrane's counsel and solicitors. He also accepted as true the charge made against Mr. Gurney.

No. XX,
p. 203 *et*
seq.

In their May issue the *Law Magazine* unreservedly retracted all their charges against Mr. Gurney and Messrs. Farrer. They published the letter Mr. Russell Gurney had written to them. It will be found at p. 300 of this work.

No. XXI,
p. 188 *et*
seq.

The affidavit of June 14, referred to by Mr. Russell Gurney, is actually printed in the 'Autobiography' itself, and affords a striking illustration of the manner in which Mr. Earp verified his facts by documents.

In the grandson's edition of 1890 this accusation is repeated at p. 394.

I will here notice another circumstance, viz., that Mr. Gurney to whom I had unreservedly communicated every circumstance connected with my private affairs, as well as those connected with the visit of De Berenger, was afterwards chosen by Mr. Lavie, *solicitor to the committee, as the leading counsel for the Stock Exchange at the subsequent trial against me.*¹ I simply relate the fact without comment.²

'Evidence,
p. 87.

This statement is flatly contradicted by Lord Cochrane's affidavit.

¹ Italics in original.

² See also *Autobiography*, ii. 367. See also eleventh Earl's edition, p. 394.

See 'Trial,'
p. 565.

Mr. Gurney had himself replied to this charge when made in Court at Lord Cochrane's trial for escape (see p. 194); and Mr. Atlay has fully dealt with it at pp. 58, 275, 339.

As many of the accusations contained in the 'Autobiography' have appeared in previous writings or speeches, I have already refuted them. It will therefore be sufficient to mention them and the pages wherein their refutation will be found. For instance, at p. 334 he complains that a certain letter which he had written to Mr. Croker could not be found, and I have already given my reasons for my doubts as to whether such a letter was ever written. At p. 336 we are told that Lord Cochrane could have easily concealed De Berenger on board the *Tonnant*. At p. 151 I have pointed out how exceedingly unlikely it was for such concealment to be successful. De Berenger was not a man who would have contentedly lived in a cask. As to Lord Cochrane's claim (p. 338) to have given voluntarily 'the only information upon which the subsequent trial was based,' by disclosing the name of De Berenger, I refer my readers to Mr. Russell Gurney's letter, to the second report of the Stock Exchange Committee, and to what I have said about Davis and his affidavit.

'Autobiography,' ii. 334.
p. 336.
p. 338.
supra, 78.
infra,
p. 302.

At p. 397, grandson's 1890 edition, a letter of De Berenger's, dated April 27, 1814, is quoted, declaring that Lord Cochrane's account of his visit to him 'was correctly detailed in your affidavit.' I cannot see how this certificate, given previous to the trial, is of any use to Lord Cochrane, especially as De Berenger gave another version of it in 'The Noble Stockjobber.'

Then he says that De Berenger had communications with the Government and the Stock Exchange before the trial for the purpose of implicating Lord Cochrane. The only proof attempted to be brought forward is an inference from another letter of De Berenger's, dated July 19, 1814, written in the King's Bench prison, in which he says:

'Autobiography,'
p. 398.

That since my confinement here I have neither written or otherwise applied directly or indirectly to any of the offices of the Government for the purpose of disclosure.

This is considered as proof that he did so before the trial. However, no corroboration is offered. I look upon Lord Cochrane and De Berenger as being equally untruthful.

At p. 398 an important admission is made. Referring to these De Berenger letters, the writer says :

Granlson's
1890
edition.

I do not blame the judge for not taking these matters into account for, confident in my entire innocence, I could not see their importance and bearing and did not even communicate them to my solicitor until too late.

'Autobio-
graphy,' ii.
341.

The writer goes on to say that 'this unjustifiable prosecution was carried out "from a desire in more influential quarters to silence, if possible, an obnoxious political adversary."' Now, though this assertion has been frequently repeated, I have never been able to find one atom of proof or even corroboration of it. Brougham's letter (July 12, 1814 ; Atlay, p. 206) shows that he was no longer wanted by the electors of Westminster, and he was under orders for the seat of war. Yet he preferred to waste his time in speculating on the Stock Exchange instead of looking after the refit of the *Tonnant*.

p. 343.

We are told that Lord Cochrane only became aware that the Mr. Lavie who had been employed at the Gambier trial was also selected to act as solicitor for the Stock Exchange prosecution after the trial had taken place. Had he known it sooner he would 'have seen the necessity of meeting every accusation with the most deliberate caution.'

p. 345.

Now this is scarcely credible. Lavie was called as a witness, and then stated that he was attorney for the prosecution. Besides, Cochrane Johnstone had attended at the striking of the special jury, and must have known who was appearing on the other side. The newspapers state that Mr. Lavie attended on behalf of the Stock Exchange, with the witnesses, before the Grand Jury on April 27. Is it possible to believe that when he had been superseded from the command of his ship, and even after a true bill had been found against him, he took so little interest in the charges that had been made against him that he did not

Atlay,
pp. 342-
344.

even look at the daily papers, or make a single enquiry in connection with the proceedings before the Grand Jury ?

'Autobio-
graphy,' ii.
345.

Of course, Mr. Lavie is abused ; but that was a misfortune which occurred to most of those who came in contact with Lord Cochrane. I cannot, however, discover that he did anything more or less than what was consistent with his duty. Then we are told : ' That there was collusion between a high official at the Admiralty and the Committee of the Stock Exchange on this point I do not hesitate one moment to assert.' Now though I have been unable to find a particle of evidence in support of this assertion, I suspect that Croker was the person he meant to incriminate.

Then the evidence of Crane and of the colour of the coat are discussed.¹ I have put the whole of Crane's evidence in the appendix.

p. 432.

Curiously enough, Lord Cochrane's own written words, '*a green coat or a coat with a green collar,*' gave Serjeant Best full permission to admit a coat of any colour he chose.

p. 352.

At pp. 405 and 406 the grandson tells us that the judge revised the report of the trial by inserting words in it, because *The Times* verbatim report does not contain these words.

At p. 89 in Lord Cochrane's 'Letter to Lord Ellenborough,' Lord Cochrane had fully withdrawn this accusation. He wrote, or allowed to be written in his name : 'I freely acquit your lordship of any subsequent interpolation.' Too many people who had memories were then in existence for Lord Cochrane to be able to continue to press this charge. But forty-five years afterwards, when most of them were dead, it was considered safe to revive it.

As regards *The Times* verbatim report, Mr. Atlay has reprinted the whole of it, speeches, evidence, and summing-up. Yet it only occupies forty-three pages in his book, while the Chief Justice's summing-up alone, which he also reprinted from the shorthand report, occupies no less than

¹ I have already pointed out that if he had prosecuted Crane for perjury, he could have put his servants and his other affidavit makers into the witness-box and gone there himself.

sixty-two pages of the same sized type. So much for *The Times verbatim* report !

And what is more, *The Times* report compresses the evidence to such a degree, that it does not even mention the Crane portmanteau—'big enough to wrap a coat in.' That is a detail left to the much abused revised report. Again, the writer tries to leave the impression that the prosecution got up the 'revised report.' Now, in 1814, 1815, 1816, it is clear that it is the summing-up alone, and not the report of the evidence, that is attacked.

The Times report of the summing-up occupies two and a half pages in Mr. Atlay's book, and, as I have already said, the report of the summing-up in the shorthand notes occupies no less than sixty-two. That some words which appear in the report are omitted in the compressed report of *The Times* is therefore an argument that carries no weight with it whatever.

Then we are told that there was no evidence that De Berenger pulled off his red uniform, star, and medal in Lord Cochrane's presence. Now anyone who had read Lord Cochrane's own affidavit of March 11 would at once gather the contrary from it. And as regards the star and medal, what are matters of conjecture to us were certainties to the Judge, counsel, and jury. *They had the actual clothes and the fac-similes before them.* If the star was sewn on, it probably remained on. And though the star was picked up in two pieces, and sewn together afterwards, it is quite possible that the pieces may still have been attached to the cloth under it when picked up. Pictures of the period show that, at that time, ornamental stars were generally broad and flat. If Lord Ellenborough had made a direct statement of facts not proved, surely counsel of the stamp of Brougham, Scarlett, and Best would have intervened either in Court or afterwards.

I have already mentioned at p. 163 the seven affidavits which impugn the character and evidence of Crane. By the simple process of omitting the dates they are now used for the purpose of making an additional attack on Lord Ellenborough.

The grandson's edition (p. 407) contains the following :—

' Autobiography,' ii.
354.

After my conviction however, it became necessary to seek additional evidence to support an appeal from the conviction, or an application for a new trial as against myself.

Lord Ellenborough refused the application, because *all the persons tried were not present to concur in it*, though the law gave me no power to enforce their attendance. The evidence on which it was grounded however is none the less conclusive because Lord Ellenborough and his colleagues declined to receive it or even *to hear it!* but in place of so doing at once delivered their outrageous sentence against me.

This appeal was grounded on the evidence of several respectable tradesmen residing in the neighbourhood of Crane the hackney coachman.

1890
edition,
pp.409,410.

Then come a summary of these seven affidavits, and the writer goes on to say :

' Autobiography,' ii.
358.

Such was a portion only of the facts which I was prepared with in my appeal to Lord Ellenborough and his colleagues. But as before said, the same judge refused to listen to the appeal, not on the ground of my having no evidence to rebut the perjury of Crane, but because all the persons convicted were not present in Court to join in the appeal * * * I held in my hand the most reliable evidence that from the money he had been paid for his perjury he had bought ' a new coach, horses, and harness.'

None of these circumstances were allowed to be received in Court.

Now *none of these affidavits were in existence when Lord Cochrane appeared before Lord Ellenborough*. Five of them were sworn to on July 22, two of them on August 9, and Lord Cochrane's last appearance before the Court of King's Bench was on June 21, when sentence was passed. *And, strange to say, when he was before Lord Ellenborough he never mentioned the name of Crane.*

I have already expressed my opinion that if Lord Cochrane had himself believed these seven men's affidavits he would have put the makers of them and his four servants—Davis, Dewman, Turpin, and Busk—and himself into the witness box, and have prosecuted Crane for perjury. His not daring to do so is one of the strongest proofs of his guilt.

These affidavits were really only meant for the illiterate portion of the Westminster electorate.

After a lapse of forty-five years, it was thought that by disregarding their dates they might be used to calumniate Lord Ellenborough, and be made a basis for money claims. Still Crane, as I have already said, after all was Lord Cochrane's best witness, as he was the only one who swore in Court that he had a portmanteau big enough to wrap a coat in, out of the dozen or more witnesses, including Lord Cochrane's own servants. Lord Cochrane, too, one would have thought, must have seen this portmanteau, yet he omitted to mention it in his affidavit.

At p. 411 (1890 ed.) we are told that William Crane was under suspension as a hackney coachman for cruelty to his horses in June 1814, and that in 1830 he was found guilty of theft, and at p. 412 (1890 ed.) we are informed that 'the facts relative to his character, even to his being under conviction whilst giving his evidence, Lord Ellenborough refused to hear, as all the parties convicted were not present in Court.' Now if Lord Cochrane knew anything of Crane's cruelty to his horses, or of anything else against Crane when he was allowed to speak without interruption before Lord Ellenborough on the 20th, he certainly did not mention it in Court.

'Autobiography,' ii. 360.
p. 362.

I must again repeat that the objection to hearing Lord Cochrane because the other parties were not in Court, only affected the proceedings on June 14, and not those of the 20th. He was in the position of a man who, ruled out of order at an early stage of a public meeting, is listened to with attention at a later period.

'Trial,' pp. 532, 535.

'I held in my hand most reliable evidence that from the money he had been paid for his perjury, he had bought a new coach, horses, harness.'

'Autobiography,' ii. 359.

It is a pity that Lord Cochrane did not put the affidavit maker King, on whom he relied for this evidence, into the witness box. He could have done so had he prosecuted Crane. King would then have been confronted with some of the Committee of the Stock Exchange, who had only paid Crane £17, including the hire of his coach. 'Two horses,

and a new coach and harness, of the best description' would certainly have been cheap at £17, and King's cross-examination would have been interesting.

The object of the writer is evidently to induce the public to believe that De Berenger's visit was the only evidence against Lord Cochrane.

With those who have read the trial, such tactics can be of no avail, but the vast majority, whose knowledge of these transactions is derived solely from the 'Autobiography,'

Atlay,
p. 351.

would arise from its perusal entirely ignorant of the close business relations between Lord Cochrane, Cochrane Johnstone and Butt, of the fact that the notes found on Lord Cochrane were traced to them or that Lord Cochrane had enjoyed the right of addressing the Court of King's Bench to obtain a new trial.

The following note appears at p. 408 of the grandson's edition :

'The post boy admitted on the trial that he had several previous examinations, and that he had *received £52 for his evidence !*'¹

The grandson does not appear to have read the trial he was writing about. Had he done so he would have seen that Shilling said : 'I had received five pounds from the gentlemen of the Stock Exchange towards my expenses.' *The Times* report makes no mention of any money having been paid to Shilling. At p. 417 of the grandson's edition we are further told that the post boy admitted 'that *previous to the trial he had received £52 !!!*'²

At p. 415 in the grandson's edition we find—

'Autobio-
graphy,' ii.
369.

Of the vindictiveness with which I was pursued there can be no better proof than that the other parties convicted on clear evidence were let off with imprisonment and half the fine inflicted on myself and Mr. Butt, whilst we who had nothing to do with the matter, were fined £1,000 and in addition sentenced to the barbarous punishment of the pillory. I advisedly say 'we' for I will here put on record my conscientious belief that Mr. Butt had no more to do with the hoax, than myself.

¹ Italics in original.

² Italics and exclamation marks in the original.

Now De Berenger was one of those included in the pillory portion of the sentence, and I have little doubt that that punishment was reserved for those who had aggravated their guilt by a defence involving perjury and subornation of perjury.

At p. 412 in the grandson's edition we find—

So little apparent danger was there of the possibility of my being declared implicated in this hoax, that even my solicitors had not taken the precaution of summoning my servants to give evidence.

'Autobiography,' ii. 362.

Now the readers of the 'Autobiography' are told nothing about the servant's affidavits having appeared in the Cochrane-Butt pamphlet, styled 'Calumnious Aspersions,' nor of the notice taken of them in the press of the period, previous to the trial.

I have already shown what care and consideration was given to the question as to whether the servants should be examined or not.

The writer of the 'Autobiography' then quotes Lord Campbell's account of the trials of Leigh Hunt for libel, Watson for high treason, and Hone for blasphemy, at all of which Lord Ellenborough presided. It takes far longer to refute and disprove an accusation than to make it, and as I cannot double the size of this book for the purpose of doing so, I most unhesitatingly appeal from these Campbell-Dundonald quotations to the shorthand notes of these trials.

1890 edition, p. 420.

Some points, however, can be briefly dealt with. For instance, in the Watson trial the 'Autobiography' quotes Lord Campbell as saying—

He asked them (the jury) whether they would take some refreshment before they left the box when the foreman in a tone which made the *Lord Chief Justice's countenance visibly collapse* said 'My Lord we shall not be long.' Accordingly after going through the form of withdrawing and consulting together, they returned and pronounced their verdict to which they had made up their minds—Not guilty.

Italics in the 'Autobiography,' 'Autobiography,' ii. 379. Edition, 1890, p. 420.

I have given above the whole of the only quotation to

Shorthand
notes by
Gurney of
'Trial of
James
Watson,'
ii. 571,
1817.

be found in the 'Autobiography' concerning this trial. But I find that the shorthand notes say that the jury partook of refreshment in Court, retired at five o'clock, and returned into Court at twenty-five minutes before seven. An absence of one hour and thirty-five minutes can scarcely be considered a form of retiring.

James Watson was an associate of Thistlewood, who was afterwards tried and executed for the Cato Street conspiracy, which was a plot to murder all the Cabinet Ministers while at dinner. Watson had severed his defence from that of Thistlewood, and he was in consequence tried separately. Had Watson been found guilty when tried before Lord Ellenborough, Thistlewood would have been tried next, and if he had been found guilty also, no innocent lives would have been sacrificed in the fight that ensued, when his gang of murderers were eventually captured or shot.

i. 367.

ii. 484.

When Watson was arrested, a paper was found on him headed Committ. P. S. (Committee of Public Safety). Among the names on it were Sir F. Burdett, Lord Cochrane, Mr. A. Thistlewood, Mr. Watson, and others. Lord Ellenborough remarked in his summing-up 'This one should suppose was an intended committee, or more probably names put down, to hold out to others the appearance to others of its being appointed.'

Lord Cochrane, however, was a prisoner in the King's Bench at the time of Watson's Spa fields riot.

The Watson trial commenced on Monday, June 9, 1817. It lasted seven days, and the Court appears to have sat for ten or eleven hours each day. By Saturday evening the evidence was closed, the speeches were finished, and the summing-up alone remained to be done.

The following conversation took place:—

ii. 425.

Lord Ellenborough.—We cannot conveniently assemble on Monday before ten. The Grand Jury are to attend here.

A Jurymen.—My Lord, we hoped we should not be dismissed till the cause was determined. We have attended six days, and it is of material importance to us as members of society that we should not be kept longer than is absolutely necessary.

Lord Ellenborough.—It is the wish of everybody that the business should be brought to a conclusion as soon as possible ; but it is quite impossible to recite the evidence to you after this hour ; it would not be possible to read it through.

A Jurymen.—It is only six o'clock my Lord.

Lord Ellenborough.—I should have to detain you several hours.

Mr. Justice Bayley.—My Lord is very much fatigued already.

A Jurymen.—I hope the Court will consider the situation of our families.

The Court adjourned till Monday. If it met at ten, the summing-up must have taken seven hours, and the deliberation of the jury took over an hour and a half.

Here we have a jury preferring to sit through a case to any adjournment. Their doing so is not looked upon as extraordinary. Customs have changed since then.

As regards Hone's trials, I regret that I can give no full idea of them. I cannot undertake to reprint coarse parodies of the Catechism, the Athanasian Creed, the Litany, and of the Ten Commandments. I have no original authority before me except Hone's own account, and even on that I am prepared to take my stand and say that I feel certain that the sympathy of every decent man who will take the trouble to wade through these trials will be on the side of Lord Ellenborough, and not on the side of Hone.

Hone was tried before Mr. Justice Abbott, and acquitted on a charge of parodying the Catechism, The Lord's Prayer, and the Ten Commandments.

He was tried a second time before Lord Ellenborough for a parody of the Litany. His line of defence was to read in Court every parody on religion that he could find whose writer or publisher had not been prosecuted. Lord Campbell says : ' The jury after a short deliberation returned into Court.' Hone says : ' The jury then at a quarter-past six retired, at eight they returned.' I do not call a deliberation for one hour and three quarters a short one.

At his third trial for a parody of the Athanasian Creed, Hone resumed his tactics of reading other parodies. To peruse his trial is to wade through every variety of blasphemy, for on this occasion he appears to have been convinced from the manner of some of the jury that his acquittal

was certain, and he therefore did all he could to irritate the Judge, whom he knew to be a firm believer in religion. Yet Lord Ellenborough sat through it all, notwithstanding the riotous interruptions of the mob, in a manner which did him the utmost credit.

Hone tells us that the mob outside the Court, while the jury were deliberating, amounted to not less than 20,000, and this at half-past eight on December 20.

'Autobiography,' ii. 379.

At p. 420 in the grandson's edition Lord Dundonald says:—

'I know nothing of Hone's works nor of the libels of which he was accused.'

Proceedings at public meeting, 7th Edition p. 13 of Appendix to 'Hone's Trial.'

If Lord Dundonald did not know anything about them, it must have been because he had forgotten the 'torrents of cheers' that greeted the following speech, delivered at a meeting called on December 29, 1817, to sympathise with Hone nine days after his acquittal.

Lord Cochrane adverted to the sentence that had been passed on him upon an unjust conviction for breaking out of prison. A fine of £100 had been imposed upon him; but sooner than have paid that fine, he would have remained and rotted in prison; his constituents paid it for him, and relieved him from his most painful situation. That money he now wished to return and with feelings of heartfelt thankfulness to Mr. Hone for his manly and able exertions in defence of the liberties of the people, he would now lay down the one hundred pounds which he then held in his hands, in addition to the sums already subscribed for him. (Here there were torrents of applause which lasted several minutes.)

He makes no mention of this £100 having been subscribed in pence. Nor is there any mention of its having been so subscribed in his speeches, in the 1830 pamphlet, or in his Observations in 1847. I have not found any allusions to a penny subscription in any newspaper, book, or pamphlet previous to 1869.

'Life of Lord Dundonald,' i. pp. 102-5.

In that year the eleventh Earl, in quoting from an 'Autobiographical fragment' written by Lord Dundonald shortly before his death, says, 'that a meeting of the electors of Westminster was held at which it was determined that

the amount of the £100 fine should be paid by a penny subscription no person being allowed to subscribe more.' Then he says that not only the £100 fine, but that the £1,000 fine with something beyond was thus realised.

Taking however the £1,100 paid in pence this alone showed that two million, six hundred thousand and forty thousand persons composing a very large proportion of the adult population of the kingdom sympathised with me. Not one of my persecutors could have elicited such an expression of public sympathy.

If the above calculation is correct, there must have been two thousand four hundred pence in every sovereign in 1817. In a letter to *The Times* the grandson has described it as a penny subscription from more than half a million persons. This would be equal to £2,083. In his 1890 edition he has wisely omitted the correct amount. When such discrepancies in figures occur, it is clear that 'Dundonald' accounts need auditing.

Times,
August 20,
1889.

In the 'Autobiographical fragment' Mr. Jackson's name is mentioned as having applied to the Master of the Crown Office to take the amount in coppers, but in his evidence in 1862 he confined himself to the statement that Lord Cochrane's constituents paid the fine, and said nothing about copper coinage. As Westminster was an extensive constituency, containing both rich and poor, I think it quite possible that the fine was raised in that district, and that some of it may have been in pence.

'W. Jackson's evidence,'
p. 14.

This 'Autobiographical fragment' may be looked upon as one of numerous 'Dundonald' myths.

The story has, however, been frequently repeated, notably by Sir Robert Anstruther when moving for a Select Committee in 1877.

I now come to one of the most important, and one of the most easily disproved, of all the Dundonald fairy-tales.

At the period of my trial, Lord Ellenborough was not only Chief Justice of the King's Bench, BUT AT THE SAME TIME A CABINET MINISTER. This terrible combination of incompatible offices was for the first time under constitutional government effected in the person of Lord Ellenborough, and to the credit of subsequent administrations for the last time also.

Capitals in
original,
1860 edi-
tion, ii. 380,
and in
Single-
volume,
1862

Edition in
1861, p. 504,
and 1862,
edition published by
11th Earl.

'Autobiography,' ii.
382.

No other Chief Justice ever came hot foot from a Cabinet Council to decide the fate of an accused person politically obnoxious to the Cabinet; the trial going on from day to day, so as to become open no less to Cabinet than to forensic discussion. . . .

Had that vote [on expulsion from the House] been in my favour, the Chief Justice could not have held his seat in the Cabinet, and his evacuation could scarcely have been otherwise than followed by that of the whole Ministry. . . . The question, however, became thus one of ministerial existence.

Times,
November
17, 1860.

Every sentence in the above quotation is untrue. The writer's history is at fault, for Lord Mansfield held both offices from 1757 until 1765. This extraordinary misrepresentation has done more service to Lord Cochrane's cause than any other. They were withdrawn by the eleventh Earl in a letter to *The Times* (November 17, 1860), only to be repeated by him in one-volume editions in 1861 and 1862. The Hon. J. W. Fortescue has unfortunately given it a fresh lease of life in a book which professes to be history, but which is chiefly a condensation of the historical novel I am now criticising. I despair of catching up this particular fairy tale! But I hope to be able to clip its wings a little by contradicting it in the words of the eleventh Earl of Dundonald. In a letter to *The Times* of November 17, 1860, after making some corrections with regard to the account of the Basque Roads affair as given in the 'Autobiography,' he says that 'in future editions this error will be rectified and in the fullest manner explained.'

After reading the above I was much astonished to find that there are in existence single-volume editions, published by Bentley in 1861 and 1862, in which all these attacks on Lord Ellenborough appear to be repeated word for word, and in which no trace of this withdrawal can be found. He had ample opportunity of repudiating the reprint of this charge in the one-volume edition, or of reprinting his letter to *The Times* when he published the continuation of his father's life in 1869. This, however, he did not do, but continued, instead, to heap abuse upon Lord Ellen-

borough. Already in 1864 he had applied for the repayment of the fine (which, according to his own account, had been more than repaid by the pennies of the nation) for the arrears of pay due to him as the personal representative of the late Earl of Dundonald, and also that 'a pension, or such other remuneration or reward as Your Most Gracious Majesty in your wisdom may deem fitting, may be granted to your memorialist.' His eldest son, to whom all these claims had been left by the tenth Earl's will (subject to a deduction of 10 per cent. for Mr. Earp), was at that time a minor. The eleventh Earl does not appear to be asking for this money as his son's representative or trustee, but in his own name.

Page 9,
evidence,
June 8
before
Select
Committee,
1877.

It might, with one of my most bitter opponents for a judge, have been a still greater marvel had I been acquitted than that I was convicted without and in opposition to evidence.

'Autobiography,' ii.
381 (p. 421,
grandson's
edition).

Now I cannot find that Lord Cochrane and the Chief Justice are ever stated by any one to have come into contact with one another before the trial, and the notes of Edward Law's speech in 1816 contain the words: 'Lord Ellenborough had no knowledge of Lord Cochrane. Zeal for naval service would have made him partial and anxious to acquit.'

In the 1890 edition, at p. 421, the grandson says:

Writing nearly fifty years afterwards, Lord Dundonald fell into excusable error in speaking of him as still in the Cabinet, whereas in 1814 he only enforced the views of the Ministry from the judicial Bench.

Here the grandson apparently makes the mistake of supposing that the Cabinets of 1806 and 1814 were the same. Now Fox was the leading spirit of the Grenville Ministry, and Lord Liverpool was the head of the other. Their views were as far apart as those of Asquith and Bonar Law.

In 1806 Lord Ellenborough had voted against his party on the important question of the guilt of Lord Melville, father of the First Lord of the Admiralty, in 1814. On February 18, 1808, he declared in the House of Lords—

‘ that no act had been committed by the Government of this country which so much disgraced its character. . . . He could not avoid reprobating in severe terms the expedition to Copenhagen.’

A man who could speak as independently as that was certainly not likely to enforce the views of a Ministry simply because it was a Ministry.

Campbell's
‘ Lives of
the Chief
Justices,’
ed. 1874,
iv. 259.

In February 1810, on the acquittal of Mr. Perry, editor of the *Morning Chronicle*, on a charge of trying to bring King George the Third into contempt, Lord Ellenborough was looked upon by the Attorney-General, Sir Vicary Gibbs, as belonging to the Opposition because he had not summed up in the way Sir Vicary would have wished.

Though Lord Dundonald's admitted failure of memory may be considered a sufficient excuse for his possible share in the above mistakes, still no such plea can be brought forward either for Mr. Earp, who professed to verify all he wrote for those responsible for the one-volume editions of 1861 and 1862, or for the grandson's edition of 1890.

Lord Dundonald's own account of himself always reminds me of that celebrated jurymen who never sat on a jury without finding himself in the company of eleven wrong-headed and unjust men.

The ‘ Autobiography ’ says :

‘ Autobio-
graphy,’ ii.
381.

Had Lord Ellenborough ever possessed a true sense of delicacy, he never would have presided at that trial.

Then the grandson goes on to say in a note of his own, at p. 421 : ‘ The “ delicacy ” referred to by Lord Dundonald will be best elucidated by the following extracts from contemporary journals commenting on the trial.’

Then he quotes from an article that appeared in the *Champion* of July 3, 1814, which will be found *in extenso* in the appendix to the second volume of the 1860 edition.

Lord Cochrane's politics are of a kind to excite the displeasure of the Court against him. One of his relations has stirred on behalf of the Princess of Wales ; and we believe he has made

himself, or assisted, some little scrutiny into Lord Ellenborough's perquisites of office.

Now I do not in any way object to the grandson's quoting from opposition or republican journals when he can find no better evidence to support his case, even if they were originally inspired either by Lord Cochrane, Cobbett, or William Jackson. But I would point out that we are given the 'It is said' of an opposition newspaper as sufficient evidence of an assertion which, if true, must have been known to Lord Cochrane himself. If there had been a particle of truth in it, Lord Cochrane would have made this charge in his own name in 1814, and would have given the time, place, and particulars of this 'little scrutiny.' It would have formed a fourteenth charge against Lord Ellenborough in 1816, and would have been contemptuously dismissed with the others, especially if brought on no better evidence than that given by the grandson.

Now it is quite possible that Lord Cochrane and other reformers may have thought a Chief Justice was overpaid, just as in 1807 some naval reformers thought that post-captains received too large a share of prize-money as compared with the seamen under their command, although Lord Cochrane held a different opinion.

The other quotation is from the *Examiner*. As it makes no definite or distinct assertion capable of being directly verified or refuted, I have not thought it worth while to reprint it, but have considered it sufficient to refer the reader to the 'Autobiography' itself.

There is an account given in the 'Autobiography' of certain words said to have been used by Princess Charlotte with reference to Lord Cochrane at the time of her escape. Lord Brougham, who was present, has absolutely denied that she used the words in question.

'Life and Times of Lord Brougham,' ii. 232.

At p. 442 the grandson quotes an account of a meeting said to have been held at Kirkcaldy on September 8, 1814. A contemporary pamphlet to be found at the Inner Temple Library has described this meeting as an entire myth. However, I do not pretend to decide which statement is correct.

In the next paragraph he writes in such a manner as would cause the reader to believe that this and other addresses had some effect on the Government in causing the pillory portion of the sentence to be remitted. But this was done on July 19, and the Kirkcaldy meeting is said to have taken place on September 8.

The grandson further quotes the opinion of various eminent lawyers on the question of Lord Cochrane's innocence. Lord Fortescue, in a letter dated November 1, 1860, wrote as follows about Scarlett—afterwards Lord Abinger :—

Grandson's
edition,
1890,
. 442.

Whom I myself heard some years after he became Chief Justice, at a dinner party at the late Sir George Philipps's, where the conversation happened to turn on your trial, that having been one of your Counsel, and fully acquainted with all the facts of your case, he was satisfied of your innocence, and that he believed that it might have been established to the satisfaction of the jury if the Judge had not arbitrarily hurried on the defence at a late hour of the evening.

I think that this conversation must have been very much after dinner. Lord Fortescue's memory was evidently defective, for Lord Abinger was never Chief Justice, and Lord Fortescue may not have described the conversation which took place with sufficient exactness. But if the rest of his account is correct, it appears a great pity that Scarlett did not say these things in some public place where it would have been of use to his client, and at a somewhat earlier period. He had a seat in the House of Commons, and his silence on these points between 1814 and 1816 is most significant.

Next comes the opinion of Sir Fitzroy Kelly, who in a letter dated December 19, 1860, wrote :

Five years after the trial of Lord Cochrane I began to study for the bar, and very soon became acquainted and interested in his case, and I have thought of it much and long during more than forty years, and I am profoundly convinced that, had he been defended singly, and separately from the other accused, or had he at the last moment, before judgment was pronounced applied with competent legal advice and assistance for a new trial he would have been honourably acquitted.

Of this Mr. Atlay writes :

His letter is dated previous to the communication made by Lord Cochrane's solicitors to the *Law Review*, and so when he declared that Cochrane would have been acquitted, had he been defended separately, he could not have been aware, as we are, that the joint defence was resolved upon, after long and anxious deliberation, by the unanimous decision of Best, Topping, Scarlett (Lord Abinger), and Brougham, who must have been far better able to form an opinion of the merits of Lord Cochrane's case than the most brilliant advocate who had never seen their brief. Sir Fitzroy starts with the assumption of Lord Cochrane's innocence ; but had he brought himself to entertain for a moment the alternative view, his professional experience would have told him that when the affairs of three defendants are inextricably entangled, it is often most dangerous to separate their defences lest they become mutually destructive.

Atlay,
p. 365.

On June 28, 1862, moreover, Sir Fitzroy Kelly described Lord Cochrane as 'unscrupulous, fearless, reckless in all the actions public and private of his life.'

Speech be-
fore Lords'
Committee
of Privi-
leges.

Then an extract is quoted from a letter said to be written by Lord Erskine in 1823.

Mr. Atlay writes :

Lord Erskine and Lord Ellenborough had been rivals at the bar, and colleagues in the Cabinet, and in the investigation into the charges against the Princess of Wales. It is difficult to believe that the ex-Lord Chancellor joined in the out-cry against the Lord Chief Justice, and strange that he did not make his high station and great forensic reputation of more avail on Lord Cochrane's behalf. The slightest expression of opinion from him in the months following the trial, would have been worth more to Lord Cochrane than any number of affidavits or pamphlets.

p. 366.

In contrast with the words of these eminent men, I venture to quote the remarks made as recently as 1889 by [a former Lord Chancellor] the Earl of Halsbury, who had been one of the Select Committee on the present Lord Dundonald's petition in 1877 and whose reputation as a criminal lawyer is equalled by few men now living and surpassed by none. It gathers weight from the fact that it was delivered, not in a friendly letter, not in talk over the dinner table, but in his place in the House of Lords.

Hansard,
cccxxxix.
1299.

On August 15, 1889, Lord Fitzgerald, in moving the second reading of a bill for the establishment of a Court of Criminal Appeal, referred to the case of Lord Cochrane, and as he quoted from the 'Autobiography' in his speech, it is not unfair to suppose that his knowledge of the case was partially, if not entirely, derived from that work. I am, however, completely baffled as to his authority for the following sentence of his speech: 'After a not very long interval Lord Dundonald's innocence was fully established, not by the Home Secretary but by independent enquiry.'

I am aware that many people have a vague belief that some such enquiry has taken place. But when, where, by whom, and after what investigation has the decision of the jury been reversed? To this question I have never been able to obtain an answer.

In his reply Lord Halsbury stated:

The account of the trial of Lord Cochrane,—both what was proved, and, what was more important to Lord Cochrane, what he did not prove, but what if innocent he could have proved,—raises in my mind a very serious question, whether any Court of Appeal would have thought it right to reverse the verdict of the jury. No doubt it was time of great political excitement; and I am not desirous of going into the matter so far as to raise questions the discussion of which might give pain to some who are still alive. I may, however, say this much about the case—the noble and learned Lord must not assume that all enlightened, educated, legal opinion concurs with him when he says there is no doubt whatever that Lord Cochrane's innocence was conclusively established.

CHAPTER II

PETITION TO PARLIAMENT, 1877

IN 1877 the then Lord Cochrane, now Lieut.-General the Earl of Dundonald, K.C.B., went down to the House of Commons asking for sympathy and a sum of money, with a petition to the Queen in one hand, and the 'Autobiography of a Seaman' in the other. He had applied for the back pay which his grandfather would have been entitled to receive had he not been removed from the service.

His petition contained an exaggerated account of his grandfather's services, based apparently upon the 'Autobiography' and other Dundonald writings. The very existence of Chili, Peru, and Brazil appears to be due to his grandfather. But even if all these exaggerations are struck out, some of the exploits were well worthy of consideration. The petition also dwelt a good deal upon the plans for attacking fortresses, which at that time were still secret.

In the 'Autobiography' these plans were said to afford the infallible means of securing at one blow our maritime superiority, and thereafter maintaining it in perpetuity of at once commencing and terminating war by one conclusive victory. . . . Some, it is true, have said, For heaven's sake don't encourage such plans!—What is to become of us? What, universal peace after their disclosure, not a man would be found to engage in war except for defence of his country. . . .

'Had the same plan been known to the rebels in the Indian Mutiny, not a single European in India would have escaped.'

When these secret plans were published in the 'Pannure Papers' in 1908 they never caused the slightest flutter in naval and military circles. From the account given

'Auto-
biography,'
p. ii. 238.

p. 239.

p. 228.
Italics in
the original.

of them in that book, I doubt very much if any of the foreign Governments who employed Lord Cochrane could have found the necessary materials for carrying them into effect, so that I do not consider that he is entitled to any praise for not having made use of them. To enable my readers to form a judgment on this point themselves, I have put the description of them in the Appendix.

I think it quite possible that the grandson fully believed in his grandfather's innocence in 1877, as in a faith in which he had been brought up from his childhood, and that he probably looked upon the 'Autobiography of a Seaman' in the light of a sacred book, and that to doubt the contents thereof would be sacrilege. If he was in this frame of mind, it made the presentation of such a petition much easier to him.

The insertion of the following words must therefore, I think, have been due to the advice of some older and more cautious person who was better acquainted with the facts, and who well knew that the slightest investigation of the incidents of the trial would have been fatal to the prayer of the petitioner:—

Your Majesty's Petitioner does not desire to recall the incidents of the trial, still less to scrutinise the evidence on which he was convicted.

The meaning of this is clear. Pay me some money, declare my grandfather innocent, but for heaven's sake do not investigate the truth of my assertions.

This petition was backed by a large number of Peers, Admirals and others, nearly all of whom may be considered to have derived their sole knowledge of the trial from various inexact Dundonald versions. As the Government declined to accede to its prayer, it was brought before the House of Commons by Sir Robert Anstruther on April 10, 1877. Most of the speakers on this occasion appear to have been saturated with the writings that had appeared under the name of Dundonald.

Sir Robert Anstruther spoke of Lord Cochrane's case as being 'the case, it might almost be said, of the most

distinguished servant the Crown had ever had in this country.' He went on to say: 'It was a very delicate thing, even after a long interval, to bring a charge against a man whose reputation stood so high as that of Lord Ellenborough.'

Then he quoted Lord Campbell for the purpose of showing 'that the trial was conducted, as against Lord Cochrane, at least with a very strong bias adverse to him in the mind of the presiding Judge.'

He went on to say that

the fine of £1,000 was immediately paid by subscriptions throughout England of a penny apiece; and that the number of people who subscribed to the fund was 2,640,000. That at least shewed that in the public mind of England there existed a very wide-spread opinion that Lord Cochrane had been unjustly convicted.

I have already audited and disallowed the items of this account at p. 196.

The whole tone of Sir Robert's speech is that of an honest, warm-hearted 'Dupe' of the Earp-Jackson-Dundonald literature. The same remarks also apply to the speech of Mr. Walpole, who also quoted Lord Campbell, and what he called Lord Dundonald's remarkable 'Autobiography.'

Sir Stafford Northcote gave various technical reasons for not complying with the prayer of the petition, and said:

If it was assumed that there had been misconduct on the part of Lord Ellenborough at the time, and a failure of justice in consequence of transactions at the trial, there might be some feeling on the part of those interested, either in the memory of Lord Ellenborough or in any of those who were concerned in the trial, that their case also should be considered, and their answer to accusations such as those brought forward by the hon. Baronet should be heard.

I must confess I was sorry to hear the hon. Baronet speak of the conduct of Lord Ellenborough in a way which seemed to me unnecessarily to prejudice the matter. This is a case in which there was a strong feeling, and everybody knows that charges

were brought against Lord Ellenborough of a very grave character for having politically perverted justice—charges which no one looking calmly at the matter will think were well founded.

Whether, under the circumstances, Lord Dundonald had all the advantages which he ought to have had in the way of defending himself, and whether, if he had had them, the result would have been different, is quite another question. But when it is implied that there had been, if not conscious, at any rate serious misconduct on the part of Lord Ellenborough, that is a point with which it would be extremely difficult for a Committee to deal, and upon which they could not arrive at a satisfactory conclusion.

If anything is to be done in the matter, it must be done on different grounds from those that have been urged. *It might be a question whether it was possible for the Crown, by grace and favour, to propose any vote of money for the purpose of recognising the services of an illustrious man.* That was a different idea. But that a Committee of this House should now undertake to look into a question of this sort seems to me to be a proposal of very grave consequence.

If there is any desire on the part of the friends of the family to bring out more of the facts of the case the Government have every disposition to give returns and information which might establish them.

Mr. Lyon Playfair, afterwards Lord Playfair, who had been on the Committee appointed to enquire into Lord Dundonald's secret plans, a man of great scientific requirements, declared himself to have been a friend of the late Earl's.

He quoted from a letter written by Lord Dundonald shortly before his death, also from the 'Autobiography,' and then went on to say :

Let me read from his autograph will which I hold in my hand, the touching terms in which it is bequeathed. I leave exclusively to my grandson Douglas all the sums due to me by the British Government for my important services, as well as the sums of pay stopped (under perjured evidence) for the commission of a fraud on the Stock Exchange. Given under my trembling hand this 21st day of February 1860, the anniversary of my ruin.

I do not know from whom Mr. Playfair obtained the document from which he was quoting.

The will actually proved at [Somerset House has a different date, and contains no mention of anniversaries or trembling hands. The clause referring to his grandson is as follows :—

I give and bequeath to my grandson Douglas Mackinnon Baillie Hamilton Cochrane subject to payment of a portion thereof to George Butler Earp aforesaid as hereinafter mentioned all the monies due to me from the British Government for my important services. Also the amount due from the British Government of my back pay, of which I was injuriously deprived during forced expulsion from the British Navy on perjured evidence which neither the Courts of Law, nor the House of Commons would give me the opportunity of rebutting.

I have printed some more of the will in the Appendix, and shall at present confine myself to stating that I think it most unfortunate that the actual words of the proved will, instead of an inaccurate version of its contents, were not laid before the public and the House of Commons in 1877. For the purpose of influencing the House of Commons the substituted will was evidently a better document than the real will. The mention of Mr. Earp's name as sharing with the grandson would have provoked criticism, and would in all probability have been fatal to the petitioner's claims. Yet I do not think that Mr. Lyon Playfair was a man who would have knowingly substituted a false will for a real one.

The *real* will was accompanied by a sworn statement of the eleventh Earl, dated May 22, 1861, stating that he had caused a careful search to be made, and 'that he verily believed that the deceased died without having left any will or codicil or testamentary paper other than the said will.' This still further complicates the mystery of the document quoted by Mr. Playfair.

Mr. Isaac Butt then spoke. His speech was in a very emotional tone. He said that he had met Lord Dundonald more than once at the house of a mutual friend, and had had a conversation with him on the subject forty years ago (1837).

Most of the speakers alluded at length to Sir Robert Wilson's restoration to the army as constituting a parallel case.

In the end Sir Robert Anstruther challenged a division, and his motion was agreed to—a great triumph for the composers of the so-called 'Autobiography.'

The eldest surviving son of the Chief Justice, the late Hon. Henry Spencer Law, then an old man, was much astonished when he first heard of this debate. At the time of the trial he was a boy at school, and he had always looked upon the debates in 1816, and the subsequent division in the House of Commons of 89 to 0, as so conclusive, that he had never thought it necessary to pay any further attention to the trial, and no other member of the family had ever troubled himself about it.

Mr. H. S. Law was as much surprised as any descendant of Sir A. Cockburn might be, if an attempt were made to renew the charges brought by Dr. Kenealy in connection with the Tichborne case. I myself had always looked upon the autobiographical account of the trial as the ravings of a man in his second childhood, and had thought that the absurdities contained in it carried with them their own contradiction.

The portion of the petition to which Mr. H. S. Law most strongly objected was worded as follows :—

At his trial the prejudice of a great and eloquent Chief Justice was for some unknown cause excited against him, and thence upon evidence now universally admitted to be imperfect, he was found guilty. A new trial was refused to him on the technical ground that the other persons charged with him, who who had escaped and fled the country, did not join in the application.

I do not at all wonder that the petitioner did not wish to have the evidence on which this charge was made properly 'scrutinised.'

On May 31, Mr. H. S. Law wrote to Sir Stafford Northcote as follows :—

36 Eccleston Square.

May 31st, 1877.

MY DEAR SIR STAFFORD NORTHCOTE,—My attention has only just been called to a Petition of the present Lord Cochrane to Her Majesty, praying H.M. 'to complete the gracious Act of Royal Justice which restored the late Ld. Dundonald to his rank and honours &c.'

This Petition has, it appears, been referred to a select Committee of the House of Commons.

Were the Petition confined to a demand for some further recognition of the very brilliant Naval Services of the late Lord Dundonald, I should be the last person to raise any opposition to its prayer.

But it is not so—The Petition proposes, on the ground of an assumed general admission, that the late Lord Dundonald was innocent of the charges, brought against him by the Committee of the Stock Exchange in 1814,—to brand with injustice and partiality the Judge who tried him, and to set aside the verdict of the Jury who found him guilty!

It is true that assertions of Lord Dundonald's innocence have, ever since the Trial, been reiterated by himself, and his friends, and, it being the business of no one in particular, to support the opposite view, these assertions have passed without challenge. It is thus that a spurious public opinion has been formed, in absolute ignorance of the facts,—very different from the opinion of the House of Commons in 1816, when the facts were in the memory of all.

Then, Lord Cochrane was able to find *one Member only*, his colleague in the representation of the City of Westminster, to second his motion, upon his bringing forward charges, impugning my father's conduct at the Trial;—the House subsequently, without a division, deciding that those charges should be expunged from its Journals.

Lord Dundonald's friends treat his restoration to the service as a testimony to his innocence of the original charge, and as a reversal of the verdict of 1814.—I consider that it should rather be looked upon, as the remission of the remainder of an unexpired sentence, and as, at most, an acknowledgment, that he had been more than sufficiently punished for his offence.

My object in writing this letter is to express my hope, that it is not the intention of the Government, to let Judgment go by default against the Judge and Jury who tried this case 63 years ago—but that they will take care that, before the Committee of

the House of Commons come to any decision, they may be placed in possession of the same evidence which that Judge and Jury had before them at the time of the Trial, and also the further information which was before the House of Commons in 1816.

Trusting that you will consider my position as the eldest surviving son of the inculpated Judge, a sufficient excuse for thus troubling you,

Believe me,

Yours sincerely,

H. S. LAW.

Sir Stafford Northcote replied on June 1 :

I will communicate with the Chairman of the Committee to which the petition has been referred (Sir Robert Anstruther), and also with the Solicitor-General,¹ who is a member of it, and will call their attention to the points to which you refer.

The Solicitor-General is already alive to the importance of doing justice, or preventing injustice being done, to the tribuna before which Lord Dundonald was originally tried and sentenced

Subsequently the following correspondence took place between Mr. H. S. Law and Sir Robert Anstruther :—

36 Eccleston Square,

June 9th, 1877.

SIR,—Having seen the Petition to Her Majesty, on the part of Lord Cochrane, which has been referred to your Honourable Committee, I trust that I may be permitted, as the eldest surviving son of the late Chief Justice, Lord Ellenborough, to point out some objections to a compliance with the prayer of that Petition, in the terms and for reasons stated in that Petition.

The Petitioner throughout assumes every point which it is his business to prove.

He assumes the late Lord Dundonald's innocence, in the face of a verdict which pronounced him guilty.

He does not 'desire to recall the incidents of the trial, or scrutinize the evidence on which he (Lord Dundonald) was convicted,' while he asserts that 'it has been admitted that he was unjustly condemned.'

I emphatically deny that any such admission has ever been made by any competent authority.

¹ Now the Earl of Halsbury, ex-Lord Chancellor.

The late Lord Dundonald received Her Majesty's free pardon, and I, for one, have no objection that Lord Dundonald's Representatives should receive every possible benefit that may be a fair and natural consequence of such a pardon. But arbitrarily to strike out a record of conviction, and to brand with the stigma of injustice the Judge who tried the cause 63 years ago, is I apprehend beyond the power of any Ministry, if it does not even transcend the limits of Her Majesty's Prerogative.—If anything could add to the palpable injustice of attempting to adopt such a course, it would be that the perfect fairness of the trial has been admitted in the most explicit manner by Lord Dundonald's Counsel, Lord Brougham, even while he expressed his disapproval of the verdict, and his dissent from the opinion of the Judge who tried the cause.

In opposition to the verdict, the late Lord Dundonald has only been able to offer the affidavits of persons who might have been produced in Court at the trial, had it been considered prudent to expose them to the risk of cross-examination.

In addition to this, as evidence of his innocence, the late Lord Dundonald puts forward the popular cry in his favour, and a popular election !

But it is hardly in these days, and with our recent experience, that a popular cry or a popular election, will be held to outweigh, upon a question of fact, the deliberate verdict of a jury.¹

Let the Committee recommend whatever sum they may think fit to be paid to the representatives of the late Lord Dundonald, in recognition of that gallant Seaman's services, provided that this recommendation is not accompanied by a Libel upon a Judge and Jury, long since gone to their account.

I have the honor to remain,

Sir,

Your obedient humble Servant,

H. S. LAW.

PS.—May I be permitted to add that in case the 2nd Vol. of the late Lord Dundonald's Autobiography should be referred

¹ Mr. H. S. Law was referring to the election of Dr. Kenealy for Stoke-on-Trent, which in the eyes of some proved the truth of his charges against Chief Justice Sir Alexander Cockburn and the identity of 'the claimant' with Sir Roger Tiebourn. The elections for Westminster and for Stoke-on-Trent had much in common. Both were based on misrepresentations and libels on the character of a judge, and when the charges were brought before the House of Commons they both met with a similar reception—one in 1816, the other in 1875.

to before your Committee as evidence of any fact, it is utterly unreliable. Failure of memory, the result of extreme old age, may charitably be allowed to account for many inaccuracies. One instance will suffice, Lord Dundonald confounds the short-lived 'Talents' Administration with that of Lord Liverpool, and represents my father as a member of the latter.

To the Honble. Chairman of the Committee
in the case of Lord Cochrane's Petition.

Sir Robert Anstruther to the Hon. H. S. Law.

1 Eccleston Square, June 9th.

SIR,—I beg to acknowledge your letter of this day's date, addressed to me as the Chairman of the Select Committee appointed to report upon Lord Cochrane's petition.

The letter shall be laid before them at its next meeting.

Yours faithfully,

ROBT: ANSTRUTHER.

The Honble. H. S. Law.

Now as my father was unacquainted with Sir Robert Anstruther, and as he wrote to him in his official position as Chairman, I think that this correspondence ought certainly to have appeared in the printed report of their proceedings, as it would have greatly assisted not only the House of Commons, but the public in coming to a correct conclusion, and would have had the good effect of opening up a spirit of enquiry.

At about this time my father heard of the articles in the *Law Magazine*, to which I have already referred. Some questions connected with copyright prevented him from republishing them, but he had them reprinted with a short preface. Copies were sent to the members of the Select Committee, and to some of the leading members of both Houses, during the latter part of the month of June. This was, however, rather late, as the Committee had unfortunately already decided not to touch upon the trial itself. The second article of the *Law Magazine* will be found at the end of this book.

CHAPTER III

SELECT COMMITTEE, 1877

THE Committee was composed as follows : The Solicitor-General (Sir Hardinge Giffard, now Earl of Halsbury), Mr. Walpole, Admiral Egerton, Mr. Russell Gurney (the Recorder of London, son of the Mr. Gurney who led the prosecution in 1814), Mr. William Holms, Mr. Allsopp, Mr. Isaac Butt, Mr. Alfred Marten (who afterwards became Sir Alfred Marten and a County Court Judge), Mr. Baxter, Mr. Sackville, Mr. Greene, Mr. O'Bryne, Mr. Tremayne, Mr. Whitbread, and Sir Robert Anstruther (Chairman).

It met seven times between May 17 and July 14, on which latter date their Report was adopted, and on the 16th it was ordered to be printed.

The most important paragraphs in this report were only carried by a majority of *one*. The minority consisted of the present Earl Halsbury, Mr. Russell Gurney, Mr. Allsopp, Mr. Alfred Marten, Mr. Sackville, and Mr. Tremayne. Except Mr. Sackville, all these members voted against the question, 'That this report as amended be the Report of the Committee to the House.'

I attended their public meetings, but at that time I knew nothing whatever about the case.

It was not until the publication of the Hon. J. W. Fortescue's 'Dundonald' that I took up the matter seriously.

In considering the petition the Committee said they had not deemed it necessary to touch on those portions of it which referred to the trial of Lord Dundonald. The evidence taken was for the most part purely documentary and formal. With the exception of Mr. Bramwell, a clerk in the War Office, who was questioned as to precedents

'Select
Committee,
1877,' p. 11.

connected with the cases of Sir Robert Wilson and Major Bristowe, the only witness examined was the petitioner himself.

‘Select
Committee,
1877,’ p. 5.
p. 6.

He was not asked a single question concerning the trial itself, and Lord Ellenborough’s name was not even mentioned in the evidence taken before the Committee.

In giving his evidence, the petitioner produced both the ‘Review of the Case of Lord Cochrane,’ published in 1830, and the ‘Observations on Naval Affairs,’ published in 1847. He also quoted the ‘Autobiography of a Seaman,’ and its continuation by the eleventh Earl.

Some of his evidence, however, deserves notice. On June 8 he was asked—

Question 61. Did your grandfather leave anything to you by his will ?

He did.

62. Have you got a copy of that part of the will here ?

I have the will here with me.

63. Did your grandfather by his will bequeath to you all the monies due to him from the British Government for his important services, and also the amount of his back pay during his expulsion from the British Navy ?

Yes.

On June 12—

Question 131. You were asked as to the date of Lord Dundonald’s will ; can you give it now ?

It is dated 16th August, 1860.

I confess to having felt considerable surprise when I first confronted the will of Lord Dundonald with the above answers. That such answers might have been unthinkingly and hurriedly given is perhaps possible, but as witnesses before a Select Committee are given an opportunity of correcting the proofs of their evidence before the final copies are sent out, I should have expected to have seen the evidence that he gave on June 8 corrected on the 12th, and worded as follows :—

‘Yes, except 10 per cent. left to Mr. Earp, my grandfather’s “friend and literary coadjutor,” as a compensation

for his services in his behalf—to his literary exertions will be mainly owing any recovery of the said sums.' Had such an answer been given it would have been in exact accordance with the words of the will.

The sentences that I have put in italics are to be found in the real will, the one dated August 16 and proved at Somerset House, part of which I have reprinted in the Appendix.

I think that the House of Commons ought to have known, the public ought to have known, and under the circumstances Mr. H. S. Law ought to have had an opportunity of knowing, that the House was being asked to pass a vote which would have the practical result of *rewarding Mr. Earp's representatives with public money for his distinguished services in producing and assisting in the production of one of the most untruthful books that ever deceived a generation of Englishmen.*

Had a complete answer been given by the petitioner the whole matter would have entered into a new phase, for the House would certainly have been asked to limit their vote so as to exclude Mr. Earp's representatives from any share in it.

An autograph will that was never proved was not the only curious document cited by the late Lord Playfair. Other and more romantic evidence that never came before the public was also laid before the members of the Select Committee. A lady with a 'veiled' name and a 'secret document' was brought on the scene by Lord Playfair in a manner which irresistibly reminds one of the Dreyfus-Esterhazy Case. I give an extract from a letter of his which appeared in the *Speaker* on April 9, 1898 :—

A remarkable episode occurred. A well-known and distinguished lady brought a letter faded with age, which Lord Dundonald wrote to her from Newgate on the night of his committal. This letter said in substance, that it was a terrible calamity for both of them, but that he was supported by a knowledge of his innocence, and that she would be supported by the guilt of her Father not being suspected.

I was authorized to place this letter before the Committee, but I declined, as I was sure that my friend Lord Dundonald

would strongly disapprove if alive. Still I shewed the letter individually to each member of the Committee, and it may have had some effect on their judgment. The love between Lord Cochrane and his correspondent was well known, and he took the consequences of the verdict against him rather than throw the guilt on the father of his love. This letter is now in the archives of the Dundonald family.

Lord Playfair was a very old man in 1898, and his letter shows that he had parted with the document referred to more than twenty years previously. Though I have no doubt that Lord Playfair did take some letter round for the purpose of influencing individual members of the Committee, I have grave misgivings as to whether it was worded exactly as stated by him; and if it in any way influenced the Committee, it seems a pity that it was not published. Possibly it would not have stood investigation any more than the affidavits I have previously mentioned.

It is, however, impossible for me to ignore a letter written by the late Lord Playfair, as it may be quoted by others. If his memory of its contents were exact, who can have been the mysterious father whose guilt was not even suspected? I doubt his existence. Lady Dundonald was not alive in 1877, so that she cannot have been the lady referred to. Her eldest son, the eleventh Earl, was born in Green Street in April 1814, after the fraud but before the trial.

‘Memoirs of
Lyon
Playfair,’
by Wemyss
Reid, 1899,
pp. 235-40.

However, we are told that this letter is in the Dundonald archives. If so, it can be produced if necessary. At one time we have been told that Lord Cochrane sacrificed himself for the sake of his uncle, and now we are told that he did so for the sake of the father of this unnamed lady. Self-sacrifice may go as far as silence, but I think it should stop short at untruthful affidavits and subornation of perjury. And if Lord Cochrane deliberately chose to sacrifice himself for the sake of another, what moral right had he to blame his judge or any one else when he found his burden too hard to bear?

Seldom have I seen more inaccuracies packed into so few pages as in Lord Playfair’s account of the fraud of

1814, and of the proceedings of the Select Committee of 1877, as described in his memoirs. He there repeats the story of the mysterious lady.

I shall not trouble my reader by going through his mistakes sentence by sentence, but shall touch on four points only. Had Lord Playfair refreshed his memory by reading the trial before writing about it, he never would have said that De Berenger delivered his news at the Stock Exchange before going to Lord Cochrane's house, or that he had landed in a boat at Dover. If he had looked up the proceedings of the Select Committee of 1877, he would not have said that back pay was granted to the grandson.

One sentence however, in justice to the descendants of Admiral Sir Alexander Cochrane, I must quote in full: 'Upon that rise Lord Cochrane made a few thousand pounds, and his uncle Admiral Cochrane made a still larger sum.'

At the time of the fraud Admiral Cochrane was on the other side of the Atlantic, in command of ships blockading the harbours of the United States. As there were no wireless or electric cables in those days, it was impossible for him to be in touch with the Stock Exchange.

I have already shown that the will quoted by Lord Playfair when in the House of Commons was not the real will, though everyone who heard or read his speech must have thought that it was. It is wonderful what an epidemic of inaccuracy has spread itself among the writers and speakers who believe in the innocence of Lord Cochrane.

It is much to be regretted that a letter of Lord Haddington's, written in 1842, could not be found. I have myself enquired about it, and find that in all probability it must have been written in the First Lord's private office, so that there would be no record of it at the Admiralty, though a copy of it may exist among Lord Haddington's papers. Sir Robert Peel alluded to it as follows, in answer to an application of Lord Dundonald's in 1844:—

I beg leave to refer your Lordship to the letter which the Earl of Haddington the First Lord of the Admiralty addressed to your Lordship in 1842, as I am not enabled to make any

'Memoirs
of Lyon
Playfair,'
by Wemyss
Reid, 1849,
pp. 235-9.

communication to your Lordship on the part of Her Majesty's Government differing in purport from that letter.

Had this letter been at all in favour of the Dundonald contentions, the original would in all probability have been kept and produced before the Committee. But I fancy that if produced, it would have contradicted the following paragraph in their report, which was carried by one vote only.

Report,
p. vii.

It appears to your Committee that these steps [partial restoration on three different occasions to rank and honour] could not have been taken by responsible advisers of the Crown, who believed that Lord Dundonald was guilty of the crime of which, in 1814, he was convicted, and the course pursued towards him amounts to nothing less than a public recognition by those Governments of his innocence.

Mr. Atlay wrote as follows concerning the above paragraph :—

Atlay,
p. 376.

That in inserting these words the Committee were going outside the terms of the inquiry, and its scope as defined by the evidence received at it, may be gathered from the fact that these sentences were not contained in the original Draft Report as proposed by the Chairman, Sir Robert Anstruther. They were only carried on division by one vote, the minority consisting of the Solicitor-General Mr. Russell Gurney, Mr. Alfred Marten, Mr. Sackville and Mr. Tremayne. Furthermore, these same members, with the exception of Mr. Sackville, voted against the question ' That this Report as amended be the Report of the Committee to the House.'

I must say that I entirely disagree with the view adopted by this majority of one. If these Governments believed in his innocence, they acted most unjustly in not making his restoration complete at the time instead of doing it by instalments. It is very curious how the majority of this committee carefully avoided expressing any opinion of their own about Lord Cochrane's innocence. The reprinting of the articles from the *Law Review* must have had some effect.

I have already quoted the opinion of one of the

Committee, the Solicitor-General, afterwards Lord Chancellor and Earl of Halsbury, as given by him in the House of Lords.

The previously expressed opinions of some of the majority of the Committee made it difficult for them to withdraw from the position they had taken up.

In their final report the Committee summarised the evidence produced before them, prefacing it with the statement :—

In considering the Petition, your Committee have not deemed it necessary to touch upon those portions of it which refer to the trial of the late Lord Dundonald, but they have confined their inquiry to the circumstances that have occurred since the trial took place.

Report.
p. iii.

The Committee mentioned the cases of Sir Robert Wilson and Major Bristowe, and reported very favourably as regards Lord Dundonald's conduct in connection with the secret plans. Their report consisted of twenty-three paragraphs. It concluded by saying, as regards the back pay :

That the reparation spoken of in the Treasury Minute is not complete ; and in the opinion of your Committee, no technical rule should be permitted to stand in the way of a 'reparation,' the justice of which seems to follow by a natural inference from the steps that have been already taken.

It should be borne in mind that the exceptionally brilliant services of Lord Dundonald would, but for his dismissal, probably have earned for him a far more ample and adequate reward than any that he received for his services rendered to the British Crown.

Next year it became necessary for the Government to deal with this report. But there was a possibility that a vote for back pay might be opposed by some of the members who had taken the trouble to read the Reviews that had been reprinted, and who had, in other ways, made themselves better acquainted with the trial. Lord Cochrane's supporters could have had no desire for a fresh debate, based on more accurate information before a House, many

of whose members were by this time well aware that Lord Cochrane was really guilty, and that his attacks on his Judge were utterly indefensible. But they wished for a vote of money 'to save their face,' as the Chinese call it.

A leader of the House of Commons generally takes the line of least resistance when he wishes to get business done, and a passage in a letter of the Hon. H. S. Law pointed to a possible way out of the difficulty.

In writing to Sir Stafford Northcote he had said :

Were the petition confined to a demand for some further recognition of the very brilliant naval services of the late Lord Dundonald, I should be the last person to raise any opposition to his prayer.

This enabled a grant of £5,000 to be made to Lord Cochrane 'in respect of the distinguished services of his grandfather, the late Earl of Dundonald.'

Now the last paragraph of Lord Cochrane's petition was worded as follows :—

Shortly before his death Lord Dundonald wrote, Sir Robert Wilson claimed his back pay as a right consequent on his unjust deprivation, and obtained it ; I have unceasingly done the same, not from the pecuniary value of the amount due, but from the consideration that its being withheld still operates as a stigma on my character and family, which is inconsistent with my restoration to the service. My efforts have hitherto been without success.

But back pay was not granted, so that the 'stigma' remains.

The sum of £5,000 has been stated to be almost exactly equivalent to the arrears of half-pay without interest. I cannot, however, undertake to audit all 'Dundonald' accounts, though I have endeavoured to do so as regards the 'penny subscription' story. The exact value of the 'distinguished services' rendered by Lord Cochrane did not concern my father more than any other taxpayer. In the 'Observations on Naval Affairs, 1847,' Lord Dundonald has published a most extraordinary and characteristic

statement of his losses on account of the trial, which may interest the historian.

He put his fine and legal expenses at	£5,000
Loss of half-pay for eighteen years	£4,000
Loss of legacy from his uncle the Hon. Basil Cochrane, who was wrought upon in his dotage by the aspersions of those around him. [Basil Cochrane died in 1826, leaving a widow]	£10,000
Loss of Culross Abbey and estate, Sir Robert Preston having signed a new deed when in a state of mental incapacity. A friend of his had informed him that there was a larger quantity of and greater variety of wines in the cellars of Culross Abbey than under any one roof in that district	£50,000
Claim on Chili	£26,000
Claim on Brazil	£100,000
Recent sale of property to creditors	£15,000

Adding these sums of money together, he complains that he had been fined not £1,000 only but . . . £240,000

It is remarkable that this summary contains no mention of the penny subscription story.

Several newspapers of the day complained that the grant was not made otherwise, and that the 'concession was not more gracious in form,' but the writers of these articles were evidently ignorant of the reasons why the vote was taken in the above-mentioned manner.

As soon as the money had been voted by the House of Commons, Mr. Earp's representatives, whose claims had been so discreetly kept in the background, rushed forward to demand their share. They at once brought an action for their money. After hearing the case in July 1878, Vice-Chancellor Malins held that the claim of Mr. Earp's representatives could not be resisted, and the £500 was ordered to be paid to them. They also received about £3,000 for their share of the Brazilian claims.

Times,
August 1,
1878.

I have already shown what the 'Autobiography of a Seaman' is. As regards the trial, it is a tissue of misrepresentations, written utterly regardless of facts and dates.

tions on
Naval
Affairs,'
pp. 81-86.
'Observa-
tions, 1847,'
pp. 81-85.

There are almost as many inaccuracies and exaggerations in the other portions of the work. It is not an autobiography; it is not written by a seaman. It was written by Mr. Earp, and when Lord Dundonald's memory was too defective for him to rely upon, he trusted to the information he received from the perjured William Jackson.

Mr. Earp's 10 per cent., and what he did for it, with a William Jackson basis, has for many years been the foundation-stone of the state of public opinion, as regards Lord Cochrane's trial. This 10 per cent. ought to have been mentioned in evidence by the petitioner before the Select Committee of the House of Commons. The public ought to have known to whom they were practically asked to vote a sum of money, and I think that the fact that the grandson had to share the money that was voted with the Earp representatives must have utterly destroyed any pleasure he may have felt at having received the balance of £4,500. He has omitted all reference to this division of the spoils in his edition of 1890, and in his letters to *The Times* in 1889.

It is, however, true that in 1877 the grandson was probably not aware of the exact parts played by George Earp and William Jackson in his grandfather's history. But he ought to have made himself acquainted with them before he re-published and revised Mr. Earp's work in 1890.

He has concluded his preface to the sequel in that book by saying, 'Many would have compiled a more eloquent sequel to the "Autobiography," none could have done so with more reverence for the subject, or with a greater desire for the most absolute simplicity in stating the facts.' I have shown him what his facts are.

CONCLUSION

To bring the reader's mind back to the main issue—the guilt or innocence of Lord Cochrane in the Stock Exchange fraud of 1814—I shall conclude by republishing the remarkable article which appeared in the *Law Magazine and Law Review* of February 1861, and which was evidently based on a careful and impartial investigation of the whole case.

THE WHOLE CASE

In our last number we reviewed the trial of Lord Cochrane.¹ 'Trial,'
We now recur to it to correct some errors into which we were p. 188.
led by the 'Autobiography of a Seaman.'

In the course of our remarks we drew attention to Lord Dundonald's bitter attack on the late Baron Gurney, for deserting his cause after having been confidentially consulted by him, and going over to lead the prosecution against him. We also gave credence to Lord Dundonald's statement that his solicitors—then, as now, a firm holding the most eminent position—had mismanaged or neglected his case. Though we expressed our doubt as to the propriety of the reflections upon Baron Gurney, yet to the positive and circumstantial statement of Lord Dundonald we attached, as is now obvious, a value to which it was not entitled. Nor are the accusations which his Lordship launched against Messrs. Farrer & Co. justifiable, and we regret that we too unguardedly accepted them to any extent.

And first, as to the charge against Baron Gurney. The Recorder of London has favoured us with the following communication, which we are very glad to lay before our readers, and which requires no comment from our pen :—

¹ *Law Magazine and Review* for February 1861—No. 20, vol. v. p. 203.

' *To the Editor of the LAW MAGAZINE AND REVIEW.*

' 8 Palace Gardens,

' February 1861.

' SIR,—The prominence given by your reviewer to a passage cited by Lord Dundonald's "Autobiography," and the comments made upon it, render it necessary for me to request the insertion of this letter in your next Number. The following is the passage to which I refer :—"The result was that an affidavit was prepared and submitted to an eminent barrister, Mr. Gurney (afterwards Mr. Baron Gurney), to whom I disclosed every particular relative to the visit of De Berenger, as well as my own previous though very unimportant transactions in the public funds. I was advised by him and by my own solicitors to confine myself to supplying the authorities with the name of De Berenger as the person seen in uniform at my house on the 21st ult. With this suggestion, wisely or unwisely, but certainly in all honesty, I refused to comply, expressing my determination to account for all my acts on the 21st of February, even to the entire of my whole time on that day. Finding me firm on that point, the affidavits were settled by Mr. Gurney, and sworn to, the name of De Berenger for the *first time thus becoming known* to those who were in search of him."

' Trial,'
p. 189.

' I do not in the least complain of the comments upon this passage made by your reviewer. I quite agree with him, that if it were true that Mr. Gurney had been consulted by Lord Cochrane in the way described, and had himself settled the affidavit in question, the subsequent use made by him of that affidavit, and his remarks upon it at the trial, would have been "unfortunate if not unfair." But the statement in the "Autobiography" is altogether untrue. It is untrue that he was in any way consulted about it. It is untrue that Mr. Gurney settled the affidavit. It is untrue that he was in the smallest degree cognisant of it until after it was published to all the world by Lord Cochrane. If I had no evidence to offer in opposition to Lord Dundonald's statement but my recollection of my father's account of the transaction, or the recollection of the transaction itself by his clerk, who is still living, I might hesitate to write this positively, though I feel quite certain that it would require something more than the assertion of Lord Dundonald, who is, as your reviewer says, "by no means careful

p. 190.

in his statement of facts," to convince any of my father's contemporaries that he had been guilty of a dishonourable action. But in addition to this evidence I have the statement, upon oath, made by Lord Dundonald himself when the circumstances were fresh in the recollection of everybody. This statement is contained in the affidavit which he used on moving for a new trial, in which he gave the history of the affidavit of the 11th March. He there states that having, on the 8th or 9th of March, received an intimation that placards were affixed in several of the streets, stating that a pretended Col. du Bourg had gone to his (Lord Cochrane's) house in Green Street, he applied to the Port-Admiral for leave of absence, and arrived in London, to the best of his belief, on the 10th of March, and "that after his arrival, he himself, conscious of his innocence, and fearing no consequences from a development of every part of his own conduct, and desiring only to rescue his character from erroneous impressions made by misrepresentations in the public prints, he, *without any communication whatsoever with any other person, and without any assistance, on the impulse of the moment, prepared the before mentioned affidavit*, which he swore before Mr. Graham on the 11th March." Yet it is this affidavit which Lord Cochrane thus swore was prepared on the impulse of the moment, without any assistance, and without any communication with any other person, and it was sworn to within a day of his return to London, which, it is now stated, formed the subject of consultations with his solicitors and Mr. Gurney; and, after consultation, was settled by the latter gentleman.

'It may be as well to state what was the slender foundation for this extraordinary fiction. It was not till three weeks after the affidavit of the 11th March was sworn to and published, that Mr. Gurney was in any way consulted in the matter. On the 2nd April a case was laid before Mr. Adam and Mr. Gurney for their opinion, as to what legal proceedings Lord Cochrane could take for the vindication of his character, in consequence of the imputations cast upon it. The case consisted almost exclusively of reports and affidavits which had been already published, and gave no information which could be used in any way prejudicial to Lord Cochrane. Some days after this, Lord Cochrane's solicitors wished again to consult Mr. Gurney, but were informed by his clerk, that since he had written on the former case he had received a general retainer from the Committee of the Stock Exchange. No objection was made, at the time to his having

accepted that retainer, or to his conducting the prosecution ; and it was not till some time after Lord Cochrane's conviction, when he was collecting his various grievances, that a single remark was made upon it. Indeed, up to the day of the trial, as Mr. Gurney's experience as a leader in the superior courts was at that time small, no little satisfaction was expressed by the friends of the defendants at the prosecution being completely outcounselled.

' I do not, of course, propose to enter upon the question of Lord Cochrane's guilt or innocence ; but one mis-statement contained in the passage I have been commenting upon I must correct. It is stated by Lord Dundonald, and has been frequently repeated, that the affidavit of the 11th March gave to the prosecutors the first information that the pretended Du Bourg was De Berenger.

' This is not the fact.

' It appears from the report of the Committee of the Stock Exchange, which report bears the signatures of the ten gentlemen who composed the committee, that five days before the publication of the affidavit of the 11th March, a gentleman (to whom the promised reward was subsequently paid) had given the information, and that a warrant had actually been previously obtained against De Berenger.

' I remain, your obedient servant,

' RUSSELL GURNEY.'

We will now refer to the attempted crimination of Lord Cochrane's solicitors. The late Mr. Parkinson was that member of the firm of Farrer & Co. who undertook the chief management of the defence, and whom Lord Cochrane seems to have consulted from the beginning of the Stock Exchange troubles in which he was involved. It will be within the knowledge of a very large circle of persons, the best able to form an opinion, what manner of man Mr. Parkinson was. A ' family solicitor ' of large practice is necessarily a confidential man, personally intrusted with the most important matters connected with the property and character of the most important part of the community ; and Mr. Parkinson was for a long series of years one of the most eminent of this influential class of professional men. A large number of peers, leading commoners, statesmen, judges, counsel, and other professional men of our own day, were his clients ; and there are many who know intimately from their own experience, and from the information derived from the generation

which preceded them, that Mr. Parkinson regarded his client's interest, and protected the causes intrusted to him with a vigilance, zeal and skill, which, in fact, was the cause of the high reputation which he enjoyed. However true this may be, still when he had the positive assertion of Lord Dundonald, that Mr. Parkinson had neglected his case and ruined his defence, even his high character could not be allowed to extinguish such a charge, when it was offered to be, and had the appearance of being substantiated. But, fortunately, it is not left to vehemence of accusation or weight of character to determine the truth of the points in issue between the late Lord Dundonald and Mr. Parkinson; for there is, we now find, direct evidence in existence upon the charges brought against the latter gentleman, with which, had we been acquainted before the article in our last Number was published, we should not only have abstained from reiterating Lord Dundonald's attack, but have offered upon it very different comment.

The charges against Messrs. Farrer & Co. are distinct. The first is—that they were guilty of neglecting Lord Cochrane's interest by not severing his defence from those of his uncle, Cochrane Johnstone, and Mr. Butt.

It will be admitted that if, without due consideration, or upon insufficient inquiry, Mr. Parkinson had determined upon making a joint defence, such neglect would have been all that Lord Dundonald affirms of it. We have, however, evidence which, in its nature, is conclusive, that the question of joining or severing was often and anxiously considered by Mr. Parkinson, in consultation with Lord Cochrane and counsel; and that with much hesitation at first but finally, when they had the ripest information on the case, they *unanimously* concurred in advising a joint defence.

Italics in original.

'Trial,'
p. 193.

On this particular point Mr. Parkinson had consultations as follows:—¹

10th May.—With Mr. Adam,² who suggested a separate defence.

16th May.—With Mr. Scarlett, who hesitated as to which was the better course.

¹ The trial, it will be remembered, took place on June 8 and 9.

² This gentleman was not counsel on the trial, but had been consulted early in the case. When Messrs. Farrer heard of the prosecution they hastened off to retain the leading counsel of the day, and they found that C. Johnstone had been beforehand with them, and it was by joining in defence they obtained the assistance of the eminent advocates who appeared for Lord Cochrane.

- 24th May.—With Serjeant Best and Mr. Brougham, who recommended a *separate* defence.
- 26th May.—With Serjeant Best, Mr. Scarlett, and Mr. Brougham, when all advised a joint defence.
- 27th May.—With Serjeant Topping, who concurred in the last recommendation.
- 1st June.—With Serjeant Best, who, on reconsideration, was still of opinion that a joint defence was preferable.
- 6th June.—With Serjeant Best, Messrs. Topping, Scarlett, and Brougham, when all the learned counsel (it then being two days before the trial, and the last opportunity of altering the ultimate decision) finally advised a joint defence.

After such evidence as the above, as to the anxious consideration of which course was the best to pursue, all allegations of neglect are flagrantly absurd. The above dates and particulars cannot be impeached, because they come from entries made by Mr. Parkinson day by day as the events occurred, and before any notion of Lord Cochrane's attack upon his solicitors was conceived. Further, Lord Cochrane had all these dates and facts stated to him in his Bill of Costs, and he never challenged them. It is, moreover, not competent for us, after the event, to assume that Lord Cochrane's counsel (who were the astutest of the day) came to a wrong conclusion upon the point, considering what were the facts laid before them. We are now convinced of C. Johnstone's guilt, and, if not equally certain of Lord Cochrane's entire innocence, at least are sceptical as to the verdict against him being just. But we must recollect that this was not the case at the time of the consultations, when there must have seemed to be more direct evidence against Lord Cochrane than against his uncle. Not only had De Berenger been traced to Lord Cochrane's house; but other matters of a suspicious character appeared to affect his Lordship more than Johnstone. Indeed, so strong did this appear, that Lord Cochrane, as we have ascertained, on one occasion urged as an objection to a joint defence, that he, Lord Cochrane, would not owe his acquittal of such a charge to the *aid derived from the proof of another man's innocence*. We have no doubt, therefore, that the learned counsel who took the responsibility of advising on the point, exercised the wisest discretion on the facts before them, and the imputation upon Messrs. Farrer & Co., of neglect in this respect, ought never to have been made.

In the next place, Lord Dundonald alleges that the brief was

not read over to him, and that he had not his attention drawn to the important discrepancy between the affidavits of himself and servants on the one hand (in which they all state De Berenger's dress was *green*); and, on the other, of the statement in the brief founded upon Mr. Parkinson's examination of the servants, when they said the coat was *red*, the colour of the coat, it must be recollected, being the pivot of the case as it affected Lord Cochrane. Lord Cochrane's memory has failed him here; for, in a letter to his solicitors on the 7th June (the day before the trial), he addressed himself to this *very point*; and on the 8th and 9th June, during the progress of the trial, he also wrote on the subject. Besides this direct evidence, it is now made quite apparent to us that Lord Cochrane exercised a very minute and active superintendence over the preparation of his defence, and that Mr. Parkinson, so far from neglecting his ease, directed all his skill and attention, and extraordinary business powers, most zealously in Lord Cochrane's interest. Had Lord Dundonald printed his bill of costs (as we remarked in our former article), the circumstances of the case would have been immediately understood by the legal profession, and, we think, by the public also. And we may be permitted to say that, were it to be published now, it would exonerate the memory of Mr. Parkinson entirely from the suspicion of having allowed such a point as this to pass unheeded. Thus:—

'Trial,'
p. 195.

On 9th May, there was an attendance upon Lord Cochrane for the purpose of pointing out the evidence which would be required.

On the 10th May, the whole morning occupied on the evidence with Lord Cochrane.

On the 12th May, the servants' evidence was read over to Lord Cochrane, when he made an alteration in that of one of them.

On the 23rd May, the rest of the examinations were read over to him.

On 7th June, the evidence was again read through with Lord Cochrane, who was informed that counsel was of opinion that no witnesses should be called. And on the same day arrived a letter from him, desiring that Mary Turpin's statement, that De Berenger's coat was *red*, should be expunged from the brief.

'If my servants had been called, they would have proved that De Berenger wore a green and not a red coat, as they deposed

on affidavits they made,' says Lord Dundonald. To which it is replied, the particular examination of these servants as to what they could prove, shewed, at least in the opinion of Lord Cochrane's counsel, that they could not be depended upon for the purpose of supporting Lord Cochrane's statement of the colour of the coat;¹ and upon this point it is perfectly clear that his counsel and solicitor exercised a wise discretion. Had the servants wavered, or been, as probably was the case, really uncertain as to the fact in question, or had they on cross-examination differed from each other, or admitted that the colour 'might have' been red, the consequence would have been at once fatal.

' Trial,'
p. 196.

This discrepancy between the servants' affidavits and the examination is, we think, explicable. The affidavits, it seems, were not prepared by the solicitor direct from the servants' mouths, but second-hand through Lord Cochrane. Lord Cochrane it seems having, contrary to advice, resolved upon publishing the servants' affidavits, and sent on the 20th March to Mr. Parkinson for a clerk to attend him, and Lord Cochrane then dictated, from notes *he had previously made*, the affidavits of the servants. This is evidently not the safest way of obtaining an uncoloured statement in an affidavit—indeed it was the mode of all others in this case likely to cause the introduction of inaccuracy.

The fact, however, appears to be, that the servants were duly submitted to a careful examination by Mr. Parkinson who evidently was a man far more experienced and capable than was Lord Cochrane of discovering what they could prove on a public examination *and* cross-examination, neither deceiving himself nor swaying their memory. In regard to the colour of the coat, he would seem to have concluded that they would not corroborate Lord Cochrane's statement. But, considering how non-observant most people are, how treacherous is their memory, and how confused Lord Cochrane's servants might well be in the recollection of the multitude of different uniforms which they would see; considering also the opportunity there was of their being misled by the overcoat and the collar, we must not attach undue weight

¹ It has been pointed out to us that there is in fact no discrepancy between the affidavits of the servants and their examination on these particulars. In the affidavits they say that De Berenger's *collar* was green. In the examination they repeat the collar was green, but add *that the coat was red*. Mr. Parkinson and his counsel were the best judges of what reliance could be placed on the servants as witnesses.

to their stating the dress was of one colour instead of another, and giving Lord Cochrane and Mr. Parkinson different versions. Still this state of memory would not do for cross-examination. However this may be, we did not, in our former article, agree with Lord Cochrane in condemning his solicitors or counsel for not calling the servants as witnesses. And, now the facts are looked at, we are perfectly satisfied that they exercised a sound discretion. Indeed, the 'statement' of Farrer & Co., in answer to Lord Cochrane's accusation, is perfectly satisfactory on this part of the subject.¹

'Trial,'
p. 197.

This statement is as follows :—

'Lord Cochrane having, in a statement prepared for the purpose of being read by him in the House of Commons on Tuesday next (a copy of which is herewith left), charged us with irregularity and neglect of duty in preparing the brief, and taking the examination of witnesses for the late trial; we feel ourselves compelled, with the greatest regret, to submit the following facts, and make the following declarations in justification of our conduct, as far as relates to the different matters charged against us by his Lordship :—

'1st. With regard to the irregular manner in which Lord Cochrane alleges the brief to have been drawn up by us as his solicitors, we beg to observe that the whole of the statement contained in it (except the pleadings, the Stock Exchange Committee's report, his Lordship's affidavit, and the proofs) was drawn out in his Lordship's presence, and afterwards read over to and approved of by him.

'2nd. With regard to the affidavits made by Thomas Dewman and Mary Turpin on the 21st of March and which his Lordship states to have been sworn at the Mansion House, in the presence of one of our clerks, we have to make the following declaration, viz. :—That on the morning of Sunday, the 20th of March, Lord Cochrane called in Lincoln's Inn Fields, and requested

¹ This statement was, we presume, the one referred to (if not read verbatim) by the Solicitor-General, Sir S. Shepherd, in the House of Commons, on July 19 (see 28 Hans. p. 770). There is another matter to which we would allude, viz. to our conjecture that Mr. Parkinson distrusted his client's case, and, not having faith in his statements, imparted no confidence to his counsel. We are assured that there is no evidence of this being the state of Mr. Parkinson's feeling. It was one of the difficulties of the case which Serjeant Best had to contend with, to explain away the deposition of his client which he could not substantiate, and which the other side contradicted.

we would immediately send a stationer's man or a clerk to write for him in Green Street. That, agreeable to his Lordship's request, one of our clerks waited upon him in Green Street about half-past two o'clock, and was employed there from that time till a quarter before six on that day, in writing by his Lordship's dictation from some minutes or papers he had before him (but not in the presence of the witnesses), four affidavits, to be sworn by Thomas Dewman, Mary Turpin, Isaac Davis, and Sarah Colton, his servants, and afterwards making copies of the affidavits for his Lordship. That when the affidavits and copies were finished, Lord Cochrane kept the copies, but ordered the clerk to take the affidavits home with him ; and desired that either he or some other person would attend the witnesses (whom his Lordship said he should send into Lincoln's Inn Fields the next morning) to the Mansion House, for the purpose of getting them sworn. That on Monday morning, the 21st of March, Thomas Dewman, Mary Turpin, and Isaac Davis, called in Lincoln's Inn Fields, and the same clerk who had attended his Lordship the day before sent them to the Mansion House, and afterwards followed them there and got the affidavits sworn, Davis having previously read over his own affidavit, and the clerks having read over to Thomas Dewman and Mary Turpin their affidavits ; and that the three affidavits when sworn were sent to Lord Cochrane's, and afterwards published by him.

' Trial,'
p. 198.

' 3rdly. With regard to the examinations of Thomas Dewman and Mary Turpin, as taken by us on the 11th of May, and stated in the brief, being different from their affidavits sworn on the 21st of March, we declare that those examinations were taken from the witnesses separately, and in the usual manner, by requiring them to state fully and correctly, and as they would be able to prove on oath at the trial, all they knew or recollected respecting De Berenger's coming to Lord Cochrane's house in Green Street, and the dress he appeared in there on the 21st of February, and by taking down every circumstance as they stated it ; but certainly without pointing out or referring them either to Lord Cochrane's affidavit, or their own affidavits sworn the 21st March. That the examinations were afterwards read over to the witnesses separately, and approved of by them. And we further declare that the examinations so taken were afterwards read over to Lord Cochrane, who made no objection to any part thereof, except to one part of Dewman's examination, which alluded to another officer who had been at his Lordship's house in

Green Street, not on the 21st, but on some other day, and, in consequence of his Lordship's objection, that part of the examination was expunged, and not inserted in the brief delivered to counsel.

'4thly. With regard to what Lord Cochrane states, that Dewman and Turpin, upon being subsequently asked how they came to state to us, as his Lordship's solicitors, that the under-coat that De Berenger wore was red, they replied they never had said so ; we most positively assert that when that question was put to Thomas Dewman after the trial, on his being sent by Lord Cochrane to make a further affidavit for the purpose of applying for a new trial, his answer was, not that he never told us that De Berenger came to Green Street in a red coat, but that, when he was before examined by us, he must have concluded the under-coat was red, because De Berenger appeared to be a military officer.

'5thly. With regard to that part of Lord Cochrane's statement in which he alleges that we, as his solicitors, in drawing up the proofs attached to the brief for the information of his counsel, copied from the public prints his Lordship's affidavit dated the 11th of March, and published in almost all the papers of the 12th and 23rd of March, but that, instead of copying also the affidavits of Thomas Dewman and Mary Turpin, dated the 21st, and published on the 23rd of March, we examined those persons and entered up the result in the proofs annexed to the briefs, which flatly contradicted his Lordship's affidavit ; and that, notwithstanding that circumstance, we omitted to call his Lordship's attention, or that of his counsel, by letter to that most essential point, we take leave to submit, that it was absolutely necessary to state Lord Cochrane's affidavit in the brief, because it might be made use of as evidence against him by the prosecutors, but that it was unnecessary to state affidavits of Thomas Dewman and Mary Turpin, because they must be examined personally at the trial ; and that, as both his Lordship's affidavit and the testimony of Thomas Dewman and Mary Turpin as taken down by us were copied, the difference between the two as far as related to the colour of De Berenger's under-coat, was apparent upon the face of the brief, although we admit we never distinctly called his Lordship's attention, or that of his counsel, to that point by LETTER. And we further beg to state, that in the affidavits sworn by Dewman and Turpin on the 21st of March, they did not state what the colour of De

Berenger's under-coat was, but only that the collar of it was green, which was not contradictory to what they stated to us on their examination.

'Trial,'
p. 199.

'Lastly. With regard to the orders Lord Cochrane states to have given to us for the examination of Dewman and Turpin, we beg to state that every direction we received from his Lordship on that subject was communicated and submitted to counsel, and particularly his Lordship's letter of the 9th of June, received in Court during the trial.¹

'FARRER & Co.'

Before we close the subject of this remarkable trial, we must make one or two observations. The first is, that it is evident Lord Cochrane's statements must never be accepted without corroborating evidence. At all times his temper was violent, and his judgment subject to be perverted. In late years his memory must have failed him, and the 'Autobiography' cannot be relied on for truth. Further, it is shown to us that all the facts which bear upon this trial have not yet transpired. Whether in some future generation they may be published, we cannot tell. But, until this be done, we believe the question of his Lordship's guilt or innocence will be raised from time to time, nor can the truth be certainly known until more is published than is at present laid before the public. Professional honour is so strong that, unless relieved from the duty of maintaining silence with regard to the information disclosed to them in confidence by their clients, the solicitors engaged on behalf of the defendants in this trial will not be able to reveal important matters which must have been imparted to them. Could we possess ourselves of the facts laid by Butt, De Berenger, C. Johnstone, and the other defendants, before their attorneys, as well as all that Lord Cochrane was cognizant of, and communicated to Farrer & Co., we should be able to form a better judgment on the matter.

Ibid.

In our former article we came to the conclusion that, though Lord Cochrane took no part in the particular fraud of which De Berenger was the agent, yet he was probably aware that C. Johnstone was concocting some trick intended to affect their pending speculations in the funds. How far Lord Cochrane was

¹ This statement was read in answer to Lord Cochrane's attack upon Farrer & Co. It was after this controversy that Lord Cochrane wrote the letter of questions to his late solicitors, endeavouring to bring up the same and other matters inculcating them. To this letter they very properly made the reply of August 3, 1814, and enclosed their bill of costs.

cognizant of what was going on, and acquiesced in his uncle's scheme—whether C. Johnstone made him a confidant to any extent—found him a willing tool, or forced upon him a false position—contriving artfully to fix a deeper stain of complicity upon him than was just, we do not pretend at present to determine. ‘Trial,’
p. 200.

We wish we could come to another conclusion upon the evidence, and believe that Lord Cochrane was as entirely innocent as he so frequently and vehemently protested he was. It is repugnant to one's moral sense to associate mean trickery and pecuniary baseness with such personal chivalry and gallant qualities as Lord Cochrane possessed. We sympathize with the desire to prove that it is untrue that a man stamped with the true marks of nobility, genius, and greatness has ever in any relation of life sunk to the condition of one of weak principles, petty aspirations, and ambiguous dealing. It is repulsive to degrade the hero to the level of a stockjobbing trickster, or to examine into extenuating circumstances, striving to diminish his degree of guilt. *Ibid.* Yet history, experience, and even the consideration of the nature of the human mind, forbid us to deny the possibility, or even the high improbability, of such a conflict of character and repugnant conduct. We wish to believe in Lord Cochrane's entire disconnection with the hoax of 21st February 1814; and, had it been possible, we would gladly have accepted all the statements in his ‘Autobiography’ as absolutely true; but we must admit that we now leave the subject of this trial without any feeling of satisfaction.

APPENDICES

APPENDIX I

SECRET PLANS

LORD DUNDONALD always considered that he had claims on the Government for not having divulged his secret plans to other countries, and for not having made use of them when in the service of Chili, Peru, and Greece. They remained a mystery until the publication of the 'Panmure Papers' in 1908. A description of them will be found at p. 340, vol. i. I give an extract from that work.

MEMORANDUM

Materials required for the expulsion of the Russians from Sebastopol :—

Experimental trials have shown that about five parts of coke effectually vaporise one part of sulphur.

Mixtures for land service, where weight is of importance, may, however, probably be suggested by Professor Faraday ; as to operations on shore I have paid little attention.

Four or five hundred tons of sulphur and two thousand tons of coke would be sufficient.

Besides these materials, it would be necessary to have, say, as much bituminous coal, and a couple of thousand barrels of gas or other tar, for the purpose of masking fortifications to be attacked, or others that flank the assailing positions.

A quantity of dry firewood, chips, shavings, straw, hay, or other such combustible materials, would also be requisite quickly to kindle the fires, which ought to be kept in readiness for the first favourable and steady breeze.

August 7, 1855.

DUNDONALD.

Materials
required
for putting
said scheme
into
practice.

NOTE.—The objects to be accomplished being specially stated the responsibility of their accomplishment ought to rest on those who direct their execution.

Smoking
out the
Russians.

Suppose that the Malakoff and Redan are the objects to be assailed, it might be judicious merely to obscure the Redan (by the smoke of coal and tar kindled in 'The Quarries'), so that it could not annoy the Mamelon, where the sulphur fire would be placed to expel the garrison from the Malakoff, which ought to have all the cannon that can be turned towards its ramparts employed in overthrowing its undefended ramparts.

There is no doubt but that the fumes will envelop all the defences from the Malakoff to the Barracks, and even to the line-of-battle ship, *The Twelve Apostles*, at anchor in the harbour.

The two outer batteries, on each side of the Port, ought to be smoked, sulphured, and blown down by explosion-vessels, and their destruction completed by a few ships of war anchored under cover of the smoke.¹

August 7, 1855.

(Signed) DUNDONALD.

If these enormous amounts of combustibles had been stored in our trenches before Sebastopol, a hostile shell might have ignited them while we were waiting for a wind to blow the smoke in the right direction. We should then have been driven from our trenches. It would not have been pleasant to hear what the French might have said if they had been smoked out of their positions in front of the Malakoff by their ally.

¹ Lord Dundonald also contemplated floating naphtha on the water, and igniting it by means of a ball of potassium. The uncertainty of the wind condemned his plans.

APPENDIX II

EXTRACTS FROM THE WILL OF ADMIRAL THE EARL OF DUNDONALD

I GIVE and bequeath to my said son Thomas Lord Cochrane conjointly with his brothers Horace William Bernardo Cochrane Arthur Auckland Leopold Pedro Cochrane and Ernest Grey Lambton Cochrane to be divided amongst them share and share alike after payment of a portion hereinafter mentioned to my friend and literary Coadjutor George Butler Earp all the moneys due to me by and hereafter to be received from the Governments of Chili Peru and Brazil the said moneys consisting of Pay Prize money and other stipulated rewards hitherto unjustly withheld by those Governments the said moneys being indisputably due to me from those States respectively according to the stipulations entered into between myself and the Chilian and Brazilian Governments as the condition of my engaging in the respective services of the said Governments.

I give and bequeath to my grandson Douglas Mackinnon Baillie Hamilton Cochrane subject to payment of a portion thereof to George Butler Earp aforesaid as hereinafter mentioned all the monies due to me from the British Government for my important services. Also the amount due from the British Government of my back pay of which I was injuriously deprived during forced expulsion from the British Navy on perjured evidence which neither the Courts of Law nor the House of Commons would give me the opportunity of rebutting. And I direct that the said monies whenever received shall be held in trust for my said grandson and for his exclusive use by his Father my said son Thomas Barnes Cochrane Lord Cochrane.

I give and bequeath to my Steady Friend and former Secretary Mr. William Jackson of Long Clausen near Melton Mowbray the sum of one hundred pounds. I give and bequeath

to my friend and literary Coadjutor George Butler Earp at present residing at Number 2 Eldon Road in the parish of Kensington in the county of Middlesex as a compensation for his services in my behalf the amount of ten per cent on all sums of money receivable from or that may be paid to my executors after my decease by the Brazilian Chilian Peruvian or British Governments and I hereby direct my executors to pay the said sum of ten per cent to the said George Butler Earp out of the said moneys whenever the same shall be received and before paying the bequests from the same secured as before directed I make this bequest to the said George Butler Earp in testimony that to his literary exertions will be mainly owing any recovery of the said sums due to me from the above mentioned States. . . .

EXTRACT FROM STATEMENT SWORN TO BY THE ELEVENTH
EARL OF DUNDONALD ON MAY 22, 1861

And referring particularly to the fact that the blank space originally left in the said will for the insertion of the day of the date thereof has never been supplied¹ I further make oath and say that I have made and caused to be made diligent and careful search in all places where he the said deceased usually kept his papers of moment and concern and in his depositories in order to ascertain whether he had or had not left any other will but that I have been unable to discover any such will and I lastly make oath that I verily believe that the said deceased died without having left any will codicil or testamentary paper whatever other than the said will by me hereinbefore deposed of and now hereunto annexed.

¹ The will was insufficiently dated. The day of the month (which was June) was omitted. However, the two witnesses to the signature swore that it was signed in August, and eventually August 16 was taken as the date of the will.

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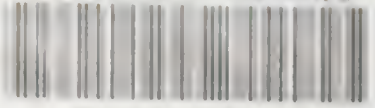
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